UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: 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.

Division of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
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1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
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SPECIAL NOTICES

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Notice for June 2010 Medicaid Rate Changes

Effective June 1, 2010, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: http://health.utah.gov/medicaid/stplan/bcrp.htm

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Health
Health Care Financing, Coverage and Reimbursement Policy

Public Notice of Medicaid State Plan Changes Concerning Quality Improvement Incentive

The Division of Medicaid and Health Financing (DMHF) is submitting changes to the Medicaid State Plan through Attachment 4.19-D, SPA 10-013-UT Quality Improvement Incentive. These changes are necessary to continue quality incentive programs for nursing facilities in state fiscal year 2011. This amendment, therefore, updates the incentive period to be July 1, 2010, through May 31, 2011.

DMHF does not expect any increased costs to result from this amendment and the incentive does not affect overall payments to the nursing facility industry or to ICF/MR providers.

The proposed effective date of this amendment is July 1, 2010, and it is pending Centers for Medicare & Medicaid Services approval.

A copy of the changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the changes are also available at local county health department offices.

Insurance
Administration

Public Hearing on Guaranteed Auto Protection (GAP) Fees for Services Provided by the Utah Insurance Department During Fiscal Year 2010 and 2011

A hearing date has been scheduled for Wednesday, May 12, 2010, at 3:00 p.m. in Room 3112 of the State Office Building (behind the Capitol), 450 N State Street, Salt Lake City, UT. The purpose of the hearing is to obtain public comment regarding the new Guaranteed Auto Protection Waiver(GAP) fee assessed to GAP providers and automobile dealers offering GAP products in Utah. The annual fee will be up to $1,000. per provider and up to $50 per dealer. This fee covers expense incurred by the Department to regulate this new law. This comes as a result of the passage of S.B. 148 from the 2010 Legislative session.

Written comments are due May 18, 2010. They should be directed to Jilene Whitby by email at jwhitby@utah.gov; by FAX at 801-538-3829; or by mail to: State Office Building, Room 3110, Salt Lake City, UT 84114.

In compliance with the Americans with Disabilities Act, individuals desiring to attend the hearing who need special accommodations during the hearing (including auxiliary communicative aids and services) should notify the Department as directed above.

(DAR NOTE: S.B. 148 (2010) is found at Chapter 274, Laws of Utah 2010, and will be effective 07/01/2010.)

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, 2010, 12:00 a.m., and April 30, 2010, 11:59 p.m. are included in this, the May 15, 2010 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 14, 2010. The agency may accept comment beyond this date and will indicate 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 hold a hearing on a specific **Proposed Rule**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "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, 2010, 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** 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; 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

Career Service Review Board, Administration
R137-1
Grievance Procedure Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33592
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are in response to the changes in the statute from H.B. 140 governing employee grievances. (DAR NOTE: H.B. 140 (2010) is found at Chapter 249, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: These rule changes eliminate references to the former Career Service Review Board and replaces them with Career Service Review Office. The changes also expedite the employee grievance process by limiting the number of steps available in that process as required by the statute changes. They also amend what issues may be heard at the Career Service Review Office, again in accordance with statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-5-106 and Section 63G-4-101 et seq. and Section 67-19-16 and Section 67-19-30 and Section 67-19-31 and Section 67-19a-101 et seq.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: While these amendments will have no impact on the Agency budget, the elimination of grievance steps and reduction of issues that can be grieved may reduce overall litigation cost to the State.
♦ LOCAL GOVERNMENTS: This agency does not deal with local government, therefore, there is no cost or savings to local government.
♦ SMALL BUSINESSES: This agency does not deal with small businesses, therefore, there is no cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This agency only deals with State agencies and State Schedule B employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This agency only deals with State agencies and State Schedule B employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CAREER SERVICE REVIEW BOARD
ADMINISTRATION
ROOM 1120 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:
♦ Robert Thompson by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at bthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2010

AUTHORIZED BY: Robert Thompson, Administrator

R137. Career Service Review [~~Board~~]Office, Administration.
R137-1. Grievance Procedure Rules.
R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

(2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection [~~67-19a-403(2)(b)(ii)~~]67-19a-403(3)(b).

"Administrator" means the incumbent in the position defined at [~~Section~~]Subsection 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

[~~"Appellant" means the party that is advancing an evidentiary level grievance decision to the appellate level before the board at Step 6.~~

~~————~~]"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

[~~"Board" means the entity defined at Section 67-19a-101(2), and refers to the five-member, gubernatorial-appointed entity at Sections 67-19a-201 and 67-19a-202.~~

~~————~~]"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

[~~"CSRB" and "CSRB Office" mean~~]CSRO means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-[~~408~~]406.

"Closing [~~Statement~~]Argument" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses [~~are~~]may be heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, petition, or other paper to the [~~CSRB Office~~]CSRO as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the [~~CSRB Office~~]CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-[~~408~~]406 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step [~~5~~]4 level.[~~However, at the appellate/step 6 level one party is designated as the appellant, the other as respondent.~~]

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the [~~CSRB~~]CSRO administrator and assigned to [~~hear~~]decide a particular grievance case at the evidentiary/step [~~5~~]4 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance issue to the evidentiary/step 4 level.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

[~~"Jurisdictional Hearing" means a hearing conducted by the administrator (or hearing officer who sits by designation to represent the administrator in these hearings) to determine timeliness, standing, jurisdiction, direct harm, and eligibility to advance a grievance issue to the evidentiary/step 5 level.~~

~~————~~]"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Motion to Dismiss" means a motion requesting that a grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Presiding Hearing Officer" means either the Administrator or designated evidentiary/step 4 hearing officer.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a [~~case~~]grievance was appealed.

[~~"Respondent" means the party against whom an appeal is made at the appellate/step 6 level.~~

]"Standard of Proof" means the evidentiary standard, which in [~~CSRB~~]CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonable resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding [~~official~~]hearing officer when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 78B-1-119.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Fridays, Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The [~~CSRB~~]CSRO and the [~~CSRB~~]CSRO hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(1), and Section R477-3-5.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-5-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The [~~CSRB~~]CSRO and [~~CSRB~~]CSRO hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-5-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the [~~CSRB Office~~]CSRO or the administrator are deemed filed on the date actually received, and are so date-stamped. The date on which

papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the [~~CSRB Office~~]Career Service Review Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator[~~,~~]or by the designated [~~CSRB~~]CSRO hearing officer[~~, or the board's chair or vice-chair~~].

(a) All filing dates are based upon the [~~CSRB Office~~]CSRO's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, documents and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the [~~CSRB~~]CSRO hearing officer.

(b) A person receiving a subpoena issued by the [~~CSRB~~]CSRO will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least [~~two~~]five full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the requesting party delivering the subpoena to the person named, unless the [~~CSRB Office~~]CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by E-mail, or to send it by facsimile transmission, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail and Distribution Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A [~~CSRB~~]CSRO decision, order, ruling or other document shall be considered issued on the date that it is signed by its [~~CSRB~~]CSRO originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator or by a [~~CSRB~~]CSRO hearing officer[~~, or by the board's chair or vice-chair~~] are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The [~~CSRB Office~~]CSRO will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a [~~CSRB~~]CSRO notice, decision, order or ruling is accomplished when any of the following occurs:

(i) deposit postage prepaid with the U.S. Postal Service,

(ii) deposit with State Mail and Distribution Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

(c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. [~~Continuance/Postponement~~]Hearing Dates, Continuance/Extension of Time.

[~~Timely, Written Requests. Upon receipt of a notice of hearing, or as soon thereafter as circumstances necessitating a continuance come to a party's knowledge, a party desiring to postpone the proceeding or filing of a pleading to a later date shall file a written request for continuance with the administrator.~~

~~(1) Every petition for a continuance shall specify the reason for the requested delay.~~

~~(2) In considering a request for continuance, the administrator, the appointed CSRB hearing officer, or the board shall take into account:~~

~~(a) whether the request was promptly and timely made, in writing; and~~

~~(b) whether the request is for good cause.~~

~~(3) A continuance may not be granted for insufficient cause nor as an excuse for lack of preparation.~~

~~(4) Parties must not anticipate that a given number of continuances are granted to each party, nor that a series of continuances is permitted.~~](1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, the administrator shall set a date for the evidentiary/step 4 hearing that is:

(a) within 30 days of the administrator's determination; or

(b) if agreed to by the parties, no more than 150 days from the administrator's determination date.

(2) Notwithstanding Subsection (1), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:

(i) whether the request was timely made in writing; and

(ii) whether the request is based on extraordinary circumstances.

(3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16-(6) and Section 67-19a-301, the [~~board~~]CSRO has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2)(a)(i), and Sections 63G-4-402 and 63G-4-403 of the UAPA.

(3) Class Action. Pursuant to Subsection 67-19a-401[~~(7)(c)~~](8), class action grievances will not be admissible for consideration by the [~~board~~]CSRO under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401([~~7~~]8)(a) and (b).

R137-1-11. Issues Appealable to the Evidentiary/Step 4 Level[~~5 and Appellate/Step 6 Levels~~].

All grievances shall be reviewed [~~for jurisdictional considerations~~]to determine:

(1) [~~If the CSRB hearing officers and the board lack jurisdiction to hear matters which are not included within the scope of~~]Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsection[~~s~~] 67-19a-202(1)(a)[~~and 67-19a-302(1)~~], or

(2) [~~If issues or components of a grievance are deemed to be satisfactorily resolved they may not qualify to be advanced further under these grievance procedures according to Section R137-1-17(2), and the board may refuse to hear or take action.~~]Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the awarding of fees or costs to an employee's attorney or representative.

(2) Pro Se Status. A party or person to a grievance proceeding may be represented pro se. When a party or person is represented pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). However, pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive or extend steps 1, 2, or 3[~~ or 4~~] or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be [~~placed~~]in writing[~~ and signed~~] and submitted to the administrator.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps [~~2, 3, or 4~~]1, 2 or 3 may be waived, but not step[~~s 5 or 6~~] 4.

Any waiver agreed to between the parties must be in writing, dated[~~, and signed by the parties or the parties' representatives~~] and submitted to the administrator according to Subsection 67-19a-401(2) and (3).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in processing a grievance or for not appearing at a scheduled proceeding.

(a) The administrator or appointed [~~CSRB~~]CSRO hearing officer shall determine the applicability of the excusable neglect standard [~~on the basis of good cause~~]when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance case from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) [~~Stay. Upon written request, the administrator, the board, or the CSRB hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding, when based upon good cause.~~

~~(a) The administrator, the board, or the CSRB hearing officer may grant a stay for a specific period of time or may grant an indefinite stay of an evidentiary/step 5 or appellate/step 6 proceeding.~~

~~(b) In considering a request for a stay of proceedings, the administrator, the board, or the CSRB hearing officer may take into consideration whether the request is unopposed or not. If the request for a stay is unopposed, the request may be granted if based upon good cause. If the request is opposed, the request shall be considered on its merits and ruled upon accordingly.~~]Stay. Upon written request, the administrator or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Section 667-19a-402, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

[~~Step 1; A verbal discussion shall be held with the immediate supervisor. In this informal action, the employee is required to fully describe the grievance for possible resolution.~~

~~Step 2; A written form of the grievance shall be submitted to the immediate supervisor. Thus distinguished from a verbal gripe/complaint, it then becomes a formal complaint requiring a written response. Steps 2, 3 and 4 require a written response within time periods outlined in Section 67-19a-402, and are to be conducted by only one supervisor, director, etc.~~

~~Step 3; A review of the grievance is to then be conducted by the agency or division director;~~

~~Step 4; A review of the grievance is then conducted by the department head, executive director, or commissioner (or the designated representative);~~

~~Step 5; An evidentiary de novo hearing is conducted before the CSRB hearing officer.~~

~~An appellate review is conducted before the CSRB board members.~~]Step 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance then becomes a formal complaint necessitating a response. Steps 2 and 3 also necessitate responses within time periods outlined in Section 67-19a-402. such responses are to be issued by only one supervisor, director, etc. at each step.

Step 2; If the grievance is not resolved at step 1, the employee may advance their grievance to step 2. Step 2 requires the grievance be reviewed by the agency or division director or designee;

Step 3; If the grievance is not resolved at Step 2, the employee may advance their grievance to step 3. Step 3 requires the grievance be reviewed by the department head, executive director, commissioner or their designated representative.

Step 4; If the grievance is not resolved at step 3, the employee may advance their grievance to step 4. Step 4 is an evidentiary de novo hearing conducted before a CSRO hearing officer.

The purpose for the above steps, or levels, is to curtail employees from having to submit their grievances to persons in agency management not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances.

R137-1-15. Procedure for [~~Grieving~~]Appealing Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been [~~issued a written reprimand, suspension~~]suspended without pay, [~~demotion, or dismissal, imposed~~]demoted or dismssed by [~~the~~]their respective department head (i.e., executive director or commissioner) may appeal [~~that~~]the department head's action directly to the [~~evidentiary/step 5 level~~]CSRO at the evidentiary step 4 level.

(a) An appeal from discipline imposed by the department head is distinguishable from a grievance.

(b) A grievance is filed at [~~steps 1 and 2, and proceeds through steps 3 and 4~~]step 1 and proceeds through steps 2 and 3. Suspensions without pay that are not imposed by a department head shall proceed through the grievance procedures as a grievance.

(c) When an appeal from discipline imposed by a department head [~~(or designated representative) ~~]occurs at the step [~~4~~]3 level, it may be appealed directly to the [~~CSRB~~]CSRO at the evidentiary/step [~~5~~]4 level.

(2) When appealed to the [~~CSRB Office~~]CSRO, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for [~~Grieving~~]Appealing Reduction in Force or Abandonment of Position.

An aggrieved employee may appeal [~~from~~]a reduction in force or abandonment of position according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days of receipt of the decision with the [~~CSRB Office~~]CSRO.

(2) An employee separated from employment for abandonment of position may appeal the department head's final written decision by filing a written appeal with the CSRO within 20 working days of receipt of the decision.

R137-1-17. [~~Jurisdictional Hearing~~]Initial Review by Administrator.

[~~A jurisdictional hearing is a formal adjudication conducted according to Subsection 67-19a-403(2)(b)(i) with Section 63G-4-206 of the UAPA incorporated by reference. An administrative review of the file is an informal adjudication according to Subsection 67-19a-403(2)(b)(ii) with Section 63G-4-202 of the UAPA incorporated by reference.~~]When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsection 67-19a-403(2) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsection 67-19a-403(2) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of[~~determine~~] the following: timeliness, [~~standing,~~] direct harm, jurisdiction, standing,[~~and~~] eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-403 and 67-19a-404.

(2) Determination. The administrator [~~shall~~]has authority to determine which types of grievances may be heard at the evidentiary/step [~~5~~]4 level. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to the evidentiary/step [~~5~~]4 level are precluded from further consideration in any grievance submitted for [~~CSRB~~]CSRO consideration.

(3) Preclusion. Those types of actions not listed in Subsection[~~s~~] 67-19a-202(1)(a) and referenced in Subsection 67-19a-302(1) are precluded from advancement to the evidentiary/step [~~5~~]4 level. When the grievance is precluded from the evidentiary/step [~~5~~]4 level, the matter under dispute shall be deemed as final at the level of the department head/step [~~4 written reply~~]3 according to Subsection 67-19a-302(2).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date [~~that a jurisdictional hearing decision or an administrative review of the file decision is issued with~~]the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 of the UAPA incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the [~~jurisdictional~~]hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's [~~formal~~]initial adjudicative [~~jurisdictional~~]hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA which are incorporated by reference.

(b) The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63G-4-402 and 63G-4-404 of the UAPA which are incorporated by reference.

(6) Summary Judgment. The administrator or the presiding hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step [~~4~~]3; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals [~~a jurisdictional~~]the administrator's initial adjudicative hearing decision to the Utah Court of Appeals or to the district court, the appealing party is responsible for paying all transcription costs and any transcript fees. The [~~CSRB~~]CSRO does not participate in the payment of these fees when appeals are taken to the appellate or trial court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to [~~jurisdictional~~]initial administrative and evidentiary/step [~~5~~]4 proceedings [~~of~~]before the [~~CSRB~~]CSRO[~~, but not to appellate/step 6 proceedings unless specifically indicated~~].

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the [~~CSRB~~]CSRO administrator or the [~~CSRB~~]CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the [~~CSRB~~]CSRO administrator or the [~~CSRB~~]CSRO hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:

(a) All [~~CSRB jurisdictional, evidentiary/step 5 and appellate/step 6 adjudications~~]initial administrative and evidentiary/step 4 adjudications at the CSRO are formal adjudicative

proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(b) An administrative review of the file pursuant to Subsection 67-19a-403(2)[~~(b)(ii)~~] is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 of the UAPA incorporated by reference.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to these grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The [~~CSRB~~]presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person.

(5) Presentation of Case. Each party's representative is given the opportunity to make an opening statement. At the appropriate time, each party's representative is given the opportunity to present evidence. After each party's representative has presented its respective case, the moving party, followed by the responding party, may offer a closing [~~statement~~]argument. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the [~~CSRB~~]presiding CSRO hearing officer shall note the objection for the record. A ruling is then made by the [~~CSRB~~]presiding CSRO hearing officer, or the objection may be taken under advisement to be ruled upon later.

(b) The [~~CSRB~~]presiding CSRO hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The administrator or [~~CSRB~~]CSRO hearing officer may, upon a party's motion or upon [~~the CSRB hearing officer's~~]their own motion, dismiss the grievance or appeal [~~with due regard for the standard of excusable neglect according to R137-1-13(3)~~]before the CSRO.

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all [~~CSRB~~]CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsection 67-19a-406(2)[~~(c)~~].

(11) Hearsay Evidence. Hearsay evidence is admissible in [~~CSRB~~]CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy [~~Subs~~]Section 63G-4-205[~~(1)~~]of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the appointed [~~CSRB~~]CSRO hearing officer, parties to a dispute may obtain discovery. The [~~CSRB~~]CSRO hearing officer has discretion to entertain motions to conduct discovery on a case-by-case basis regarding the following:

[~~(i) production of witnesses;~~

~~(ii) production of documents, records and things;~~

~~(iii) issuance of subpoenas which are issued pursuant to R137-1-6 and R137-1-8;~~

~~(iv) the taking of interrogatories;~~

~~(v) the taking of depositions, when a proposed witness is not available for giving testimony at a scheduled hearing and when a witness's testimony appears reasonably calculated to lead to the discovery of admissible evidence;~~

~~(vi) requests for admissions; and~~

~~(vii) physical and mental examinations.~~](i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and

(ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.

(c) No other form of discovery is permitted.

[~~(c)~~](d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the [~~appointed CSRB~~]presiding CSRO hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known at the prehearing/scheduling conference, or by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Written motions, pleadings, briefs, and memoranda for all [~~CSRB~~]CSRO proceedings may not exceed 20 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed ten pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than ten double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests more than 20 and 10 pages respectively to the [~~CSRB~~]CSRO for the granting of any exceptions to the page limitation provision.

(c) The [~~CSRB~~]CSRO may weigh all requests to exceed the page limitation provision based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The board does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are [~~requested~~]subpoenaed to testify in a hearing.

(a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Nondisruption. The parties and their representatives, the administrator and the [~~CSRB~~]CSRO hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

(c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the [~~CSRB~~]CSRO hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 78B-1-119. The [~~CSRB~~]CSRO reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

(2) Hostile Witnesses. When the [~~CSRB~~]presiding CSRO hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/Sequestering of Witnesses.

(a) The [~~CSRB~~]presiding CSRO hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties.

(c) The [~~CSRB~~]presiding CSRO hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management Representative. Prior to every hearing the [~~agency's representative~~]agency may designate a person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify. Neither the grievant nor the management representative may be excluded from the hearing.

R137-1-20. Public Hearings.

A [~~CSRB~~]CSRO hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator[~~, the board,~~] or the [~~CSRB~~]CSRO hearing officer may close either a portion or an entire hearing based upon [~~a compelling reason~~]reasonable grounds.

(b) An evidentiary/step [~~5~~]4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator[~~, the board,~~] or the [~~CSRB~~]CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c)[~~, and 67-19a-408(6)~~].

(3) Media Presence. All hearings at the jurisdictional[~~,~~]and evidentiary/step [~~5~~]4 level[~~and appellate/step 6 levels~~] are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at the evidentiary/step [~~5~~]4 proceeding.

(4) Distribution of Decisions. Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, [~~T~~]the administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to [~~Subsection 67-19a-408(5)~~]the Open and Public Meetings statute.

R137-1-21. The Evidentiary/Step [5]4 Adjudicatory Procedures.

(1) Authority of the [~~CSRB~~]CSRO Hearing Officer/Presiding Officer. The [~~CSRB~~]CSRO hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at evidentiary/step [~~5~~]4 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on any motions, discovery requests, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Evidentiary/Step [~~5~~]4 Hearing. An evidentiary/step [~~5~~]4 hearing shall be a [~~new~~]hearing [~~for~~]on the record according to Subsections 67-19a-406(1) and (2), held de novo, with both parties being granted full administrative process as follows:

(a) The [~~CSRB~~]CSRO hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The [~~CSRB~~]CSRO hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary/step [~~5~~]4 hearing support with substantial evidence the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the [~~CSRB~~]CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary/ step [~~5~~]4 factual findings support the allegations of the agency or the appointing authority, then the [~~CSRB~~]CSRO hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the [~~CSRB~~]CSRO hearing officer shall give deference to the decision of the agency or the appointing authority[~~ unless ~~]. If the CSRO hearing officer determines that the agency's penalty is [~~determined to be ~~]excessive, disproportionate or constitutes an abuse of discretion[~~ in which instance the CSRB~~], the CSRO hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the [~~CSRB~~]CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The [~~CSRB~~]CSRO hearing officer shall note appearances for the record and [~~shall determine which party has~~]note the party having the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the [~~CSRB~~]CSRO hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the [~~CSRB~~]CSRO hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the [~~tolling ~~]period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. Notwithstanding R137-1-21(1)(h) above, following the closing of the record, the [~~CSRB~~]CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the [~~CSRB~~]CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step [~~5~~]4 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step [~~5~~]4 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the [~~CSRB~~]CSRO hearing officer[~~, unless an appeal is taken to the appellate/step 6 level~~]. Enforcement measures available to the [~~CSRB~~]CSRO include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step [~~5~~]4 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step [~~5~~]4 decision. The same [~~CSRB~~]CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within ten working days upon receipt of the evidentiary/step 5 decision according to the time period at Subsection 67-19a-407(1)(a)(i), not Section 63G-4-302.

(13) Appeal to the Utah Court of Appeals. To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the evidentiary/step 4 decision and final agency action according to Sections 63G-4-401 and 63-4-4-3 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the evidentiary/step 4 decision. The CSRO may not share any cost for a transcript or transcription of the evidentiary/step 4 hearing.[~~(c) An appeal to the appellate/step 6 level from a CSRB hearing officer's reconsideration decision and order must be filed within ten working days upon receipt of the reconsideration or within ten working days after expiration of the time for receipt of the reconsideration, whichever is first.~~

~~R137-1-22. The Board's Appellate/Step 6 Procedures.~~

~~(1) Transcript Production. The party appealing the CSRB hearing officer's evidentiary/step 5 decision to the board at the appellate/step 6 level shall order transcription of the~~

~~evidentiary/step 5 hearing from the court reporting firm within ten working days upon receipt of acknowledgment of the appeal from the administrator.~~

~~(a) Appellants shall be responsible for all transcription production costs. The CSRB Office receives the transcript original; the appellant receives a transcript copy.~~

~~(b) The respondent may inquire of the CSRB Office about obtaining a transcript copy, or may directly purchase a copy from the court reporting firm.~~

~~(2) Briefs. An appeal hearing before the board at step 6 is based upon the evidentiary record previously established by the CSRB hearing officer during the evidentiary/step 5 hearing. No additional or new evidence is permitted unless compelled by the board.~~

~~(a) The appellant in an appellate/step 6 proceeding must obtain the transcript of the evidentiary/step 5 hearing. After receipt of the transcript, the appellant has 30 calendar days to file an original and six copies of a brief with the administrator. Additionally, the respondent must be provided with a copy of the appellant's brief.~~

~~(b) After receiving a copy of the appellant's brief, the respondent then has 30 calendar days to file an original and six copies of a brief with the administrator. The appellant may file an original and six copies of a reply brief which addresses the respondent's brief.~~

~~(c) After receiving both parties' briefs, the administrator distributes the briefs and the CSRB hearing officer's evidentiary/step 5 decision to the board members.~~

~~(d) Each party is responsible for filing its original and six copies with the CSRB Office and for exchanging a copy with the opposing party.~~

~~(e) Briefs shall be date-stamped upon their receipt in the CSRB Office.~~

~~(f) The time frame for receiving briefs shall be modified or waived only for good cause as determined by the CSRB chair or vice-chair, or the administrator.~~

~~(3) Rules of Procedure. The following rules are applicable to appeal hearings before the board at the appellate/step 6 level:~~

~~(a) Dismissal of Appeal. Upon a motion by either party or upon its own motion, the board may dismiss any appeal prior to holding a formal appeal hearing if the appeal is clearly moot, without merit, improperly filed, untimely filed, or outside the scope of the board's authority.~~

~~(b) Notice. The board shall distribute written notice of the date, time, place, and issues for hearing to the aggrieved employee, to the employee's counsel or representative, to the appropriate agency official, to the agency's counsel or representative, and to the agency's management representative, at least five working days before the date set for the hearing.~~

~~(c) Compelling Evidence. The board may compel evidence in the conduct of its appeal hearings, according to Subsection 67-19a-202(3).~~

~~(d) Oral Argument/Time Limitation. The board grants up to 20 to 25 minutes to each party for oral argument. The board may grant additional time when deemed appropriate.~~

~~(e) Oral Argument Set Aside. If the board determines that oral argument is unnecessary, the parties shall be notified. However, the parties' representatives may be expected to appear before the board at the date, time, and place noticed to answer any questions raised by the board members.~~

~~(f) Argument or Memoranda. The board may require the parties to offer oral argument or submit written memoranda of law.~~

~~(4) The Board's Standards of Review. The board's standards of review based upon the following criteria:~~

~~(a) The board shall first make a determination of whether the factual findings of the CSRB hearing officer are reasonable and rational according to the substantial evidence standard. When the board determines that the factual findings of the CSRB hearing officer are not reasonable and rational based on the evidentiary/step 5 record as a whole, then the board may, in its discretion, correct the factual findings, and also make new or additional factual findings.~~

~~(b) Once the board has either determined that the factual findings of the CSRB hearing officer are reasonable and rational or has corrected the factual findings based upon the evidentiary/step 5 record as a whole, the board must then determine whether the CSRB hearing officer has correctly applied the relevant policies, rules, and statutes according to the correctness standard, with no deference being granted to the evidentiary/step 5 decision of the CSRB hearing officer.~~

~~(c) Finally, the board must determine whether the decision of the CSRB hearing officer, including the totality of the sanctions imposed by the agency, is reasonable and rational based upon the ultimate factual findings and correct application of relevant policies, rules, and statutes determined according to the above provisions.~~

~~(5) Appeal Hearing Record. The proceeding before the board shall be recorded by a certified court reporter, or in exceptional circumstances by a recording machine.~~

~~(6) Appellate Review. Upon a party's application for review of the CSRB hearing officer's evidentiary/step 5 decision, the board's appellate/step 6 decision is based upon a review of the record, including briefs and oral arguments presented at step 6, and no further evidentiary hearing will be held unless otherwise ordered by the board. Section 63G-4-208 of the UAPA is incorporated by reference.~~

~~(7) Remand. Until the board's decision is final, the board may remand the case to the original CSRB hearing officer to take additional evidence or to resolve any further evidentiary issues of fact or law with instructions or may make any other appropriate disposition of the appeal.~~

~~(8) Distribution of Appellate Decisions. The board's decision and order is issued on the date that it is signed and dated by the CSRB chair, vice-chair or another board member. After the board's appellate/step 6 decision is issued, it is distributed according to R137-1-8(3).~~

~~(a) The board's appellate decision shall be distributed to the aggrieved employee, the employee's counsel or representative, the appropriate agency official, the agency's counsel or representative, and to the agency's management representative. The board's appellate decision shall be final in terms of administrative review under these grievance procedures. The board may, at its discretion, release to the parties its determination orally prior to issuance of its official written decision.~~

~~(b) The board's appellate decision is binding on the agency that is a party to the appeal unless its decision and ruling is overturned, vacated, or modified resulting from an appeal to the Utah Court of Appeals.~~

~~(c) The board may affirm, reverse, adopt, modify, supplement, amend, or vacate the CSRB hearing officer's decision, either in whole or in part.~~

~~(9) Rehearings. The board does not permit rehearings.~~

~~(10) Reconsideration.~~

~~(a) Reconsideration requests of the board's appellate/step 6 decisions will be conducted pursuant to the provisions of Section 63G-4-302.~~

~~(b) Any request for reconsideration of a previously issued decision by the board is subject to the following conditions:~~

~~(i) Reconsideration requests must contain specific reasons why a reconsideration is warranted with respect to the board's factual findings and legal conclusions.~~

~~(ii) The board has discretion to decide whether it may reconsider any previously adjudicated matter.~~

~~(iii) The board only grants a reconsideration if appropriate justification is offered.~~

~~(iv) When the board agrees to the petitioner's request, the board's reconsideration response is in writing, with no further hearing or proceeding on the record, unless the board reopens the record or remands the case to the evidentiary/step 5 level.~~

~~(v) Any appeal from a board-issued reconsideration to the Utah Court of Appeals must be filed according to Section 63G-4-401(3)(a)of the UAPA.~~

~~(11) An Appeal to the Utah Court of Appeals.~~

~~To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the board's decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.~~

~~(12) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the appellate/step 6 proceeding. The CSRB Office may not share any cost for a transcript or transcription of the appeal hearing. The petitioning party should provide a copy of the appeal hearing's transcript to the responding party when an appellate/step 6 proceeding is transcribed.~~]

R137-1-[~~23~~]22. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the previous Career Service Review Board[~~board~~] or a [~~CSRB~~]CSRO hearing officer. Section 63G-4-503 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the [~~CSRB Office or the administrator~~]CSRO.

(b) The petition shall be date-stamped upon receipt in the [~~CSRB Office~~]CSRO.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, decision or order to be reviewed;

(c) describe the circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) include an address and telephone number where the petitioner can be reached during regular work days; and

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator[~~ or the board~~]:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the [~~board, in its judgment,~~]administrator deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The [~~board or the~~] administrator shall prepare the declaratory ruling without unnecessary delay. The [~~board~~] CSRO shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail and Distribution Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the [~~board~~]CSRO must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The [~~CSRB Office~~]CSRO shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The [~~board or the~~]administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the [~~board~~]CSRO.

KEY: grievance procedures
Date of Enactment or Last Substantive Amendment: [~~May 6, 2009~~]2010
Notice of Continuation: August 4, 2006
Authorizing, and Implemented or Interpreted Law: 34A-5-106; 67-19-16; 67-19-30; 67-19-31; 67-19-32; 67-19a et seq.; 63G-4 et seq.

Career Service Review Board, Administration
R137-2
Government Records Access and Management Act

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33593
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are in response to the changes in the statute from H.B. 140 governing the Career Service Review Board. (DAR NOTE: H.B. 140 (2010) is found at Chapter 249, Laws of Utah 2010, and will be effective 07/01/2010.).

SUMMARY OF THE RULE OR CHANGE: These rule changes eliminate references to the former Career Service Review Board and replaces them with Career Service Review Office. They also change to whom initial GRAMA requests are to be sent.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-12-103 and Section 63A-12-104 and Section 63G-2-101 et seq. and Subsection 67-19a-203(8)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule reflect only wording changes necessitated by the Agency name change from Career Service Review Board to the Career Service Review Office. The process of making and fulfilling records requests has not changed. Therefore, these changes will have no impact on the state budget.
♦ LOCAL GOVERNMENTS: This Agency does not deal with local government, therefore, there is no cost or savings to local government.
♦ SMALL BUSINESSES: This Agency does not deal with small businesses, therefore, there is no cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This Agency only deals with State agencies and State Schedule B employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This Agency only deals with State agencies and State Schedule B employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CAREER SERVICE REVIEW BOARD
ADMINISTRATION
ROOM 1120 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:
♦ Robert Thompson by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at bthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2010

AUTHORIZED BY: Robert Thompson, Administrator

R137. Career Service Review [~~Board~~]Office, Administration.
R137-2. Government Records Access and Management Act.
R137-2-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Career Service Review [~~Board~~]Office.

R137-2-2. Authority.

The authority for this rule is found in Sections 63G-2-204 of the Government Records Access and Management Act (GRAMA) and 63A-12-104 of the Utah Administrative Services Code.

R137-2-3. Definitions.

A. "Administrator" means the Administrator of the Career Service Review [~~Board~~]Office as set forth at Sections 67-19a-101(1) and 67-19a-204.

B. "[~~CSRB~~]CSRO" means the Career Service Review [~~Board~~]Office.

[~~C. "Chairman" means the person mentioned at Section 67-19a-201(5).~~

~~D~~]C. "GRAMA" means the Government Records Access and Management Act as enacted by the 1992 Utah Legislature, Sections 63G-2-101 through 901, Utah Code Annotated.

[~~E~~]D. "Records Officer" means the individual responsible to fulfill Section 63G-2-103(25) of the GRAMA.

R137-2-4. Records Officer.

A. The records officer for the [~~CSRB~~]CSRO shall be the [~~administrator~~]administrative assistant.

B. The records officer shall review and respond to requests for access to [~~CSRB~~]CSRO records, according to Section 63A-12-103.

R137-2-5. Requests for Access.

A. Requests for access to [~~CSRB~~]CSRO records shall be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the records being requested. A records access form may be obtained from the [~~CSRB~~]CSRO upon request, but this form is not required in order to petition for access to [~~CSRB~~]CSRO records.

B. Requests should be directed to [~~either~~]the Records Officer[~~ or Administrator~~], Career Service Review [~~Board~~]Office, 1120 State Office Building, Salt Lake City, UT 84114.

C. The [~~CSRB~~]CSRO is not required to respond to requests submitted to the wrong person, agency or location within the time limits set by the GRAMA.

R137-2-6. Fees.

A. Reasonable fees may be charged for copies of records provided upon request. Fees for photocopying may be charged as authorized by Section 63G-2-203. A fee schedule may be obtained from the [~~CSRB office~~]CSRO by telephoning 801-538-3048 or by making a personal inquiry at the [~~CSRB~~]office during regular business hours.

B. The [~~CSRB~~]CSRO may require payment of past fees and future fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R137-2-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for application of a waiver of a fee may be made to the [~~CSRB~~]CSRO records officer.

R137-2-8. Requests to Amend a Record.

A. An individual may contest the accuracy or completeness of a document pertaining to the requester, pursuant to Section 63G-2-603. Requests to amend a record shall be processed as informal adjudications under the Utah Administrative Procedures Act. All requests to amend a record must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the record to be amended.

B. Adjudicative proceedings concerning requests to amend a record or records under the GRAMA shall be informal adjudicative proceedings and shall comply with Section 63G-2-401 et seq.

R137-2-9. Time Periods under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R137-2-10. Appeal of Agency Decision.

A. If a requester is dissatisfied with the [~~CSRB~~]CSRO's initial decision, the requester may appeal that decision to the [~~CSRB chairman~~]CSRO administrator under the procedures of Section 63G-2-401 et seq.

B. A person may contest the accuracy or completeness of a document pertaining to that individual according to Section 63G-2-603. The initial request must be made to the [~~CSRB administrator~~]CSRO administrative assistant. An appeal from the [~~CSRB administrator's~~]CSRO administrative assistant's decision may be made to the [~~CSRB chairman~~]CSRO administrator under the procedures of Section 63G-2-603.

C. Appeals of requests to amend a record shall be informal adjudications under the Utah Administrative Procedures Act.

R137-2-11. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by GRAMA under Section 63G-2-202(8). Requests for access to such records for research purposes may be made directly to the [~~CSRB~~]CSRO records officer.

KEY: public records, records access[~~*~~]
Date of Enactment or Last Substantive Amendment: [~~1993~~]2010
Authorizing, and Implemented or Interpreted Law: 63G-2-101 through 63[g]G-2-901; 63A-12-103 through 63A-12-104; 67-19a-203(8)

Commerce, Occupational and Professional Licensing

R156-24b

Physical Therapy Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33584
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Physical Therapy Licensing Board reviewed the rule and determined that changes need to be made to modify the education requirement for foreign-educated applicants, update the continuing education requirements to be less restrictive and more reader friendly, and establish standards for continuing education documentation to be maintained by licensees.

SUMMARY OF THE RULE OR CHANGE: In Section R156-24b-103, statutory citation updated and capitalized "Division". In Section R156-24b-302a, proposed amendments add to the list of educational deficiencies that foreign-educated applicants for a physical therapist and physical therapist assistant licenses could correct with

completing college level credits or by passing College Level Examination Program (CLEP). Section R156-24b-303b is entirely rewritten. In Subsection R156-24b-303b(1), the number of continuing education contact hours that a physical therapist is required to complete in ethics/law is being decreased from six to three because the Board, representatives of the Utah Physical Therapy Association and several individual therapists felt that six hours was too many in this area. A listing of examples of subjects to be covered in an ethics/law course is added. In Subsection R156-24b-303b(2), several modifications are made to the standards for acceptable continuing education. Limits are placed on the credit that licensees may receive for lecturing or instructing continuing education courses. A listing of acceptable course types is added. Limits on the number of continuing education contact hours in various course types are established. The list of acceptable providers of continuing education is extended to individual facilities and commercial continuing education providers. Information to be included in documentation that will verify completion of continuing education is established.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-24b-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: The proposed amendments to the continuing education requirements have minimal savings impact on a small number of local government entities, such as school districts, that employ physical therapists and physical therapist assistants. This is because the proposed amendments allow individual facilities, such as a school district, to host their own continuing education courses for licensees without having to pay fees necessary to apply for sponsorship of a third party.
♦ SMALL BUSINESSES: The proposed amendments to the continuing education requirements have minimal savings impact on small businesses because the change allows individual facilities to host their own continuing education courses without having to pay fees necessary to apply for sponsorship of a third party. This may result in limited savings for some physical therapy facilities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. The proposed amendments in this filing could save physical therapists and physical therapist assistants money because they allow individual facilities to host their own continuing education courses. The courses offered in a facility would likely have minimal or no registration fees associated with the continuing education offering. This would save the licensees money that they would otherwise spend to travel to and register for continuing education courses. The Division is not able to determine an exact amount of savings due to a wide varying degree of different circumstance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed physical therapists and physical therapist assistants and applicants for licensure in those classifications. The proposed amendments in this filing could save physical therapists and physical therapist assistants money because they allow individual facilities to host their own continuing education courses. The courses offered in a facility would likely have minimal or no registration fees associated with the continuing education offering. This would save the licensees money that they would otherwise spend to travel to and register for continuing education courses. The Division is not able to determine an exact amount of savings due to a wide varying degree of different circumstance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing modifies the continuing education requirements (allowing facilities to host continuing education courses, reducing the number of hours required in ethics/law, clarifying continuing education credit for lectures and instruction, etc.); for foreign educated applicants, it expands the types of course deficiencies that may be corrected; and makes other technical amendments. No fiscal impact to businesses is anticipated, and the amendments may result in a cost savings for licensees as indicated in the rule summary.

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:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/01/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-24b. Physical Therapy Practice Act Rule.
R156-24b-103. Authority - Purpose.

This rule is adopted by the [~~d~~]Division under the authority of Subsection 58-1-106(1)(a) to enable the [~~d~~]Division to administer Title 58, Chapter 24b.

R156-24b-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States whose degree was not accredited by CAPTE shall document that the applicant's education is equal to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in [~~the humanities, social sciences and liberal arts~~]pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

(a) humanities;
(b) social sciences;
(c) liberal arts;
(d) physical sciences;
(e) biological sciences;
(f) behavioral sciences;
(g) mathematics; or
(h) advanced first aid for health care workers.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

(a) an associates, bachelors, or masters program; or

(b) in accordance with Section 58-1-302, an applicant for a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in [~~the humanities, social sciences and liberal arts~~]pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

(a) humanities;
(b) social sciences;
(c) liberal arts;
(d) physical sciences;
(e) biological sciences;
(f) behavioral sciences;
(g) mathematics; or
(h) advanced first aid for health care workers.

R156-24b-303b. Continuing Education.

[~~(1) In accordance with Subsection 58-24b-303(2), there is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 24b as a physical therapist and a physical therapist assistant.~~

~~(2) During each two year period commencing on June 1 of each odd numbered year:~~

~~(a) a physical therapist shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of six hours must be completed in ethics/law;~~

~~(b) a physical therapist assistant shall be required to complete not less than 20 hours of continuing education directly related to the licensee's professional practice of which a minimum of three hours must be completed in ethics/law.~~

~~(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.~~

~~(4) Continuing education under this section shall:~~

~~(a) be relevant to the licensee's professional practice;~~

~~(b) be prepared and presented by individuals who are qualified by education, training and experience to provide physical therapy continuing education; and~~

~~(c) have a method of verification of attendance and completion.~~

~~(5) Credit for professional education shall be recognized in accordance with the following:~~

~~(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences or training sessions which meet the criteria listed in Subsection (4) above and which are approved by, or under sponsorship of:~~

~~(i) the American Physical Therapy Association;~~

~~(ii) the Utah Physical Therapy Association;~~

~~(iii) accredited universities or colleges; or~~

~~(iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of physical therapy;~~

~~(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university and teaching continuing education courses in the field of physical therapy;~~

~~(c) a maximum of six hours per two year period may be recognized for clinical reading or in-service directly related to physical therapy practice; and~~

~~(d) a maximum of 12 hours per two year period may be recognized for internet or distance learning courses that include an examination and issuance of a completion certificate.~~

~~(6) A licensee shall be responsible for maintaining competent records of continuing education for a period of four years after the close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to continuing education to demonstrate it meets the requirements of this section.~~](1) Required Hours. In accordance with Subsection 58-24b-303(2), during each two year renewal cycle commencing on June 1 of each odd numbered year:

(a) A physical therapist shall be required to complete not fewer than 40 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(b) A physical therapist assistant shall be required to complete not fewer than 20 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(c) Examples of subjects to be covered in an ethics/law course for physical therapists and physical therapist assistants include one or more of the following:

(i) patient/physical therapist relationships;

(ii) confidentiality;

(iii) documentation;

(iv) charging and coding;

(v) compliance with state and/or federal laws that impact the practice of physical therapy; and

(vi) any subject addressed in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.

(d) The required number of contact hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

(e) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each contact hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one contact hour of continuing education for every two hours of time spent:

(i) lecturing or instructing a course;

(ii) in a post-professional doctorate or transitional doctorate program; or

(iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.

(b) Course Content and Type. The course shall be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the course.

(i) The content of the course shall be relevant to the practice of physical therapy and shall be completed in the form of any of the following course types:

(A) department in-service;

(B) seminar;

(C) lecture;

(D) conference;

(E) training session;

(F) webinar;

(G) internet course;

(H) distance learning course;

(I) journal club;

(J) authoring of an article or textbook publication;

(K) poster platform presentation;

(L) specialty certification through the American Board of Physical Therapy Specialties;

(M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(N) post-professional doctorate from a CAPTE accredited program;

(O) lecturing or instructing a continuing education course; or

(P) study of a scholarly peer-reviewed journal article.

(ii) The following limits apply to the number of contact hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of 40 contact hours for initial specialty certification through the American Board of Physical Therapy Specialties (ABPTS);

(B) a maximum of 40 contact hours for hours spent in a post-professional doctorate or transitional doctorate CAPTE accredited program;

(C) a maximum of 40 contact hours for hours spent in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(D) a maximum of half of the number of contact hours required for renewal for lecturing or instructing in continuing education courses meeting these requirements;

(E) a maximum of half of the number of contact hours required for renewal for online or distance learning courses that include examination and issuance of a completion certificate;

(F) a maximum of 12 contact hours for authoring a published, peer-reviewed article;

(G) a maximum of 12 contact hours for authoring a textbook chapter;

(H) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;

(I) a maximum of six contact hours for authoring a non-peer reviewed article or abstract of published literature or book review; and

(J) a maximum of six contact hours for authoring a poster or platform presentation.

(c) Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association, organization, or facility involved in the practice of physical therapy; or

(iv) a commercial continuing education provider providing a course related to the practice of physical therapy.

(d) Objectives. The learning objectives of the course shall be clearly stated in course material.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.

(g) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

(i) At a minimum, the documentation shall contain the following:

(A) the date of the course;

(B) the name of the course provider;

(C) the name of the instructor;

(D) the course title;
(E) the number of contact hours of continuing education credit; and
(F) the course objectives.
(ii) If the course is self-directed, such as personal or group study or authoring of a scholarly peer-reviewed journal article, the documentation shall contain the following:
(A) the dates of study or research;
(B) the title of the article, textbook chapter, poster, or platform presentation;
(C) an abstract of the article, textbook chapter, poster, or platform presentation;
(D) the number of contact hours of continuing education credit; and
(E) the objectives of the self-study course.
(6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of continuing education during the two-year renewal cycle specified in Subsection (1), up to ten contact hours of the excess may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant
Date of Enactment or Last Substantive Amendment: [~~August 10, 2009~~]2010
Notice of Continuation: January 30, 2007
Authorizing, and Implemented or Interpreted Law: 58-24b-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing
R156-56
Utah Uniform Building Standard Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33566
FILED: 04/22/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to update the rule as necessitated by H.B. 45, H.B. 73 and H.B. 183 which were passed during the 2010 Legislative Session. The proposed amendments clarify duties of the advisory peer committees, update and clarify building code training fund requirements, and make technical cleanup changes. (DAR NOTE: H.B. 45 (2010) is found at Chapter 232, Laws of Utah 2010, and will be effective 07/01/2010. H.B. 73 (2010) is found at Chapter 53, Laws of Utah 2010, and was effective 05/11/2010. H.B. 183 (2010) is found at chapter 310, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: The term "rules" has been replaced with "rule" throughout the rule. Also, the words "Division" and "Commission" have been capitalized throughout the rule where appropriate. In Section R156-56-102, amendments delete definitions of "Uniform Building Standards" and "Unprofessional conduct" as they are no longer used in the rule. In Section R156-56-202, amendments clarify the duties of the advisory peer committees. In Section R156-56-303, statute and rule citations are updated. In Section R156-56-420, amendments update current procedures for submitting funding requests to the Uniform Building Code Commission Education Advisory Committee and to clarify the criteria which the Committee shall consider in approving funding grants. In Section R156-56-604, amendments are made due to H.B. 73 which changed the statute citation concerning contractor continuing education requirements. In Sections R156-56-701 and R156-56-703, and the new Sections R156-56-702, R156-56-801, R156-56-802, R156-56-803, R156-56-804, R156-56-805, R156-56-806, R156-56-807, R156-56-808, R156-56-901, R156-56-902, R156-56-903, R156-56-904, R156-56-905, R156-56-906, and R156-56-907, changes to these sections are made as the result of H.B. 45 which now adopts building codes by legislative action rather than by the Division by administrative rule. This filing deletes all adopted codes from the rule. It leaves approved codes which are still approved by the Uniform Building Code Commission and the Division. It also leaves the provisions dealing with the review process for proposed amendments to adopted or approved codes. In Section R156-56-801 (previously Section R156-56-820), the amendments approve codes that were reviewed and approved by the Uniform Building Code Commission and were recommended to the Legislature to be included in H.B. 45. Pursuant to H.B. 183 approved codes are still approved by the Uniform Building Code Commission rather than adopted by the Legislature. Section R156-56-920 is renumbered as Section R156-56-802. It should be noted that even though numerous code books which have been incorporated by reference in this rule are being deleted in this rule filing, updated editions of the code books are now contained in statute as a result of H.B. 45. Therefore, various agencies/persons will still be responsible to purchase/have knowledge concerning those code books.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-56-1 and Section 58-56-19 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-56-4(2) and Subsection 58-56-6(2)(a)

MATERIALS INCORPORATED BY REFERENCES:
- ♦ Removes Table 1805.5(6) entitled "Empirical Foundation Walls", published by Department of Commerce, Division of Occupational and Professional Licensing, 01/01/2007

♦ Updates International Existing Building Code (IEBC), including its appendix chapters, published by International Code Council, 2009
♦ Removes International Building Code (IBC), including Appendix J, published by International Code Council, 2006
♦ Removes International Mechanical Code, published by International Code Council, 2006
♦ Removes Utah Wildland Urban Interface Code (UWUI), published by International Code Council, 2006
♦ Removes International Energy Conservation Code (IECC), published by International Code Council, 2006
♦ Removes National Electrical Code (NEC), published by National Fire Protection Association, 2008
♦ Removes International Fuel Gas Code (IFGC), published by International Code Council, 2006
♦ Removes International Plumbing Code (IPC), published by International Code Council, 2006
♦ Removes International Residential Code (IRC), published by International Code Council, 2006
♦ Removes Appendix E of the International Residential Code, published by International Code Council, 2006
♦ Removes Pre-standard and Commentary for the Seismis Rehabilitation of Buildings (FEMA 356), published by Federal Emergency Management Agency (FEMA), November 2000
♦ Removes NFPA 225 Model Manufactured Home Installation Standard, published by National Fire Protection Association (NFPA), 2005
♦ Removes Federal Manufactured Housing Construction and Safety Standards (HUD Code), published by Department of Housing and Urban Development, 04/01/1990
♦ Adds ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings, published by American Society of Civil Engineers (ASCE), 2007

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments that are being proposed implement legislation from the recent 2010 Legislative Session and will not result in any additional impact on any party beyond what was identified in the legislative fiscal notes associated with the bills identified above.
♦ LOCAL GOVERNMENTS: The amendments that are being proposed implement legislation from the recent 2010 Legislative Session and will not result in any additional impact on any party beyond what was identified in the legislative fiscal notes associated with the bills identified above.
♦ SMALL BUSINESSES: The amendments that are being proposed implement legislation from the recent 2010 Legislative Session and will not result in any additional impact on any party beyond what was identified in the legislative fiscal notes associated with the bills identified above.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments that are being proposed implement legislation from the recent 2010 Legislative Session and will not result in any additional impact on any party beyond what was identified in the legislative fiscal notes associated with the bills identified above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments that are being proposed implement legislation from the recent 2010 Legislative Session and will not result in any additional impact on any party beyond what was identified in the legislative fiscal notes associated with the bills identified above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, this filing conforms the existing rule to recent statutory amendments. No fiscal impact to businesses is anticipated.

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 Jones 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/09/2010 09:00 AM, State Office Building, 450 N State Street, Room 4112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rule[s].
R156-56-101. Title.

[~~These rules are~~]This rule is known as the "Utah Uniform Building Standard Act Rule[s]".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or [~~these rules~~]this rule:

(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), fees assessed by an agency of the state or political subdivision of the state for the issuance of permits for construction, alteration, remodeling, and repair and installation including building, electrical, mechanical and plumbing components.

(3) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(4) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the codes adopted under [~~these rules~~]this rule and taking appropriate action based upon the findings made during inspection.

(5) "Permit number", as used in Sections R156-56-401 and R156-56-402, means the standardized building permit number described below in R156-56-401.

(6) "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.[

~~(7) "Uniform Building Standards" means the codes identified in Section R156-56-701 and as amended under these rules.~~

~~(8) "Unprofessional conduct" as defined in Title 58, Chapter 1 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-56-502.~~]

R156-56-103. Authority.

[~~These rules are~~]This rule is adopted by the [~~d~~]Division under the authority of Subsection 58-1-106(1)(a) to enable the [~~d~~]Division to administer Title 58, Chapter 56.

R156-56-105. Board of Appeals.

If the [e]Commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the following shall regulate the convening and conduct of the special appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appealing party may petition the [e]Commission to act as the board of appeals.

(2) The person making the appeal shall file the request to convene the [e]Commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63G-4-201(3)(a) and Section R151-46b-7. A request by other means shall not be considered. Any request received by the [e]Commission or [~~d~~]Division by any other means shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the person making the appeal requests, but does not timely receive a final written decision, the person shall submit an affidavit to this effect in lieu of the final written decision.

(4) The request shall be filed with the [~~d~~]Division no later than 30 days following the issuance of the disputed written decision by the compliance agency.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the [e]Commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The [~~e~~]Commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the [~~e~~]Commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the issue. If it is determined that a conflict does exist, the member shall be excused from participating in the proceedings.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63G, Chapter 4.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require [e]Commission approval.

R156-56-106. Fees.

In accordance with Subsection 58-56-9(4), on April 30, July 31, October 31 and January 31 of each year, each agency of the state and each political subdivision of the state which assesses a building permit fee shall file with the [~~d~~]Division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge to have been assessed to the [~~d~~]Division.

R156-56-202. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f) and 58-56-5(10)(e), the following committees as advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of nine members, which shall include a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board or as directed by the Uniform Building Code Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Section R156-1-205. The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) review of codes proposed for adoption or approval as assigned by the Division in collaboration with the Commission;

(b) review of requests for amendments to the adopted codes or approved codes as assigned to each committee by the [~~d~~]Division with the collaboration of the [~~e~~]Commission;

([~~b~~]c) submission of recommendations concerning the [~~requests for amendment~~]reviews made under Subsection (a) and (b); and

([~~e~~]d) the Education Advisory Committee shall review and make recommendations regarding funding requests which are submitted, and review and make recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 58-56-9(4).

R156-56-302. Licensure of Inspectors.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector required to be licensed under Subsection 58-56-9(1) shall qualify for licensure and be licensed by the [~~d~~]Division in one of the following classifications:

(a) Combination Inspector; or

(b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

(a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under [~~these rules~~]this rule or amendments to these codes as included in [~~these rules~~]this rule.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted codes.

(iii) After determination of compliance or noncompliance with the adopted codes take appropriate action as is provided in the aforesaid codes.

(b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under the adopted codes as provided under Subsections R156-56-302(3)(b) and R156-56-302(2)(c)(ii).

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under [~~these rules~~]this rule or amendments to these codes as included in [~~these rules~~]this rule.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the adopted codes.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the adopted codes, take appropriate action as is provided in the adopted codes.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for codes adopted under [~~these rules~~]this rule:

(i) the "Combination Inspector Certification" issued by the International Code Council; or

(ii) all of the following certifications:

(A) the "Building Inspector Certification" issued by the International Code Council or both the "Commercial Building Inspector Certification" and the "Residential Building Inspector Certification" issued by the International Code Council;

(B) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors, or both the "Commercial Electrical Inspector Certification" and the "Residential Electrical Inspector Certification" issued by the International Code Council;

(C) the "Plumbing Inspector Certification" issued by the International Code Council, or both the "Commercial Plumbing Inspector Certification" and the "Residential Plumbing Inspector Certification" issued by the International Code Council; and

(D) the "Mechanical Inspector Certification" issued by the International Code Council or both the "Commercial Mechanical Inspector Certification" and the "Residential

Mechanical Inspector Certification" issued by the International Code Council.

(b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for codes adopted under [~~these rules~~]this rule:

(i) the "Building Inspector Certification" issued by the International Code Council;

(ii) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Code Council;

(iv) the "Mechanical Inspector Certification" issued by the International Code Council;

(v) the "Residential Combination Inspector Certification" issued by the International Code Council;

(vi) the "Commercial Combination Certification" issued by the International Code Council;

(vii) the "Commercial Building Inspector Certification" issued by the International Code Council;

(viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;

(ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;

(x) the "Commercial Mechanical Inspector Certification issued by the International Code Council;

(xi) the "Residential Building Inspector Certification" issued by the International Code Council;

(xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;

(xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;

(xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;

(xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the codes adopted under [~~these rules~~]this rule including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Structural Masonry Special Inspector, Structural Steel and Bolting Special Inspection, Structural Welding Special Inspection, Spray Applied Fire Proofing Special Inspector, Residential Energy Inspector, Commercial Energy Inspector;

(xvi) the Certified Welding Inspector Certification issued by the American Welding Society;

(xvii) any other certification issued by an agency specified in Chapter 17 of the IBC or an agency specified in the referenced standards; or

(xviii) any combination certification which is based upon a combination of one or more of the above listed certifications.

(c) If no qualification is listed in the IBC for a special inspector, the special inspector may submit his qualifications to the licensing board for approval.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the [~~d~~]Division; and

(ii) pay a fee determined by the department pursuant to Section 63J-1-504.

(5) Code transition provisions.

(a) If an inspector or applicant obtains a new, renewal or recertification or replacement national certificate after a new code or code edition is adopted, the inspector or applicant is required to obtain that certification under the currently adopted code or code edition.

(b) After a new code or new code edition is adopted under [~~these rules~~]this rule, the inspector is required to re-certify their national certification to the new code or code edition at the next available renewal cycle of the national certification.

(c) If a licensed inspector fails to obtain the national certification as required in Subsection (a) or (b), their authority to inspect for the area covered by the national certification automatically expires at the expiration date of the national certification that was not obtained as required.

(d) If an inspector recertifies a national certificate on a newer edition of the codes adopted before that newer edition is adopted under [~~these rules~~]this rule, such recertification shall be considered as a current national certification as required by [~~these rules~~]this rule.

(e) If an inspector complies with these transition provisions, the inspector shall be considered to have a current national certification as required by [~~these rules~~]this rule.

R156-56-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308a.

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

R156-56-420. Administration of Building Code Training Fund.

In accordance with Subsection 58-56-9(3)(a), the Division shall use monies received under Subsection 58-56-9(4) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. The following procedures, standards and policies are established to apply to the administration of the fund:

(1) The Division shall not approve or deny expenditure requests from the Building Code Training Fund ("the fund") until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f), 58-56-5(10)(d) and (e), and R156-56-202(1)(a) has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) grants in the form of reimbursement funding to the following organizations which administer code related educational events, seminars or classes:

(i) schools, colleges, universities, departments of universities or other institutions of learning;

(ii) professional associations or organizations; and

(iii) governmental agencies.

(b) costs or expenses incurred as a result of educational events, seminars or classes directly administered by the Division;

(c) expenses incurred for the salary, benefits or other compensation and related expenses resulting from the employment of a Board Secretary;

(d) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(e) other related expenses as determined by the Division.

(3) The following procedure shall be used for submission, review and payment of funding grants:

(a) [~~A funding grant applicant shall submit a "Tentative Training Plans and Funding Request Estimate" preferably prior to the beginning of the fiscal year for budget consideration.~~

~~(b)~~]A funding grant applicant shall submit a completed "Application for Building Code Training Funds Grant" [~~preferably~~]a minimum of 15 days prior to the meeting at which the request is to be considered and prior to the training event on forms provided for that purpose by the Division. Applications received less than 15 days prior to a meeting may be denied.[

~~(c) A funding grant applicant shall include in its application a summary and analysis of training costs based upon the estimated costs of the proposed training.~~]

([~~d~~]b) Payment of approved funding grants will be made as reimbursement after the approved event, class, or seminar has been held and the required receipts, invoices and supporting documentation, including proof of payment if requested by the Division or Committee, have been submitted to the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including but not limited to:

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) the prior record of the program sponsor in providing codes training including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

([~~a~~]c) costs of the facility including:

(i) the location of a facility or venue to the type of event, seminar or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed educational event, seminar or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

([~~b~~]d) the estimated cost for instructor fees including:

(i) the experience or expertise of the instructor in the proposed training area;

(ii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iii) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar or class;

(iv) travel expenses; and

(v) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar educational events, seminars or classes;

([e]c) the estimated cost of advertising materials, brochures, registration and agenda materials including:

(i) printing costs which may include creative or design expenses; and

(ii) whether delivery or mailing costs, including postage and handling, are reasonable compared to the cost of alternate available means of delivery;

([~~d~~]f) other reasonable and comparable cost alternatives for each proposed expense item; and

([e]g) any other information the Committee reasonably believes may assist in evaluating a proposed expenditure.

(5) Joint Functions.

(a) "Joint function" means a proposed event, class, seminar or program that provides code or code related education and education or activities in other areas.

(b) Only the prorated portions of a joint function which are code and code related education are eligible for a funding grant.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the code and code amendment education; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(6) Advertising materials, brochures and agenda or training materials for a funded educational event, seminar or class shall include a statement which acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

R156-56-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-56-9.1 and 58-56-9.5, unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

(1) Engaging in the sale of factory built housing without being registered.

First offense: $500

Second offense: $1,000

(2) Selling factory built housing within the state as a dealer without collecting and remitting to the [~~d~~]Division the fee required by Section 58-56-17.

First offense: $500

Second offense: $1,000

(3) Acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under Title 58, Chapter 56 or using the title building

inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under Title 58, Chapter 56.

First offense: $500

Second offense: $1,000

(4) Acting as a building inspector beyond the scope of the license held.

First offense: $500

Second offense: $1,000

(5) Hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure.

First offense: $800

Second offense: $1,600

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Section 58-56-9.5.

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating or mitigating circumstances, to increase or decrease the fine amount based on the evidence reviewed.

R156-56-601. Modular Unit Construction and Set-up.

Modular construction and set-up shall be as set forth in accordance with the following:

(1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.

(2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in [~~these rules~~]this rule shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the manufacturing facility.

R156-56-604. Factory Built Housing Continuing Education Requirements.

[~~(1)~~]Pursuant to Subsection 58-56-15(1)(f)(ii), continuing education required for manufactured housing installation contractors is [~~defined and clarified as follows:~~

~~(a)~~]the continuing education required by Subsection [~~58-55-501(21), which is effective July 1, 2005~~]58-55-303(2)(b).

R156-56-701. ~~[Specific Editions of Uniform Building Standards]~~Adopted and Approved Codes.

(1) Adopted Codes. The Division shall publish the codes adopted by the Legislature pursuant to Section 58-56-4 on its website as a separate document and adopted codes shall be no longer be incorporated into this rule.[~~In accordance with Subsection 58-56-3(1)(b)(ii), and subject to the limitations contained in Subsection (6), (7), and (8), the following codes are hereby incorporated by reference, which codes together with any amendments specified under these rules, are adopted as the construction standards to be applied to building construction, alteration, remodeling and repair and in the regulation of building construction, alteration, remodeling and repair in the state:~~

~~(a) the 2006 edition of the International Building Code (IBC), including Appendix J promulgated by the International Code Council shall become effective on January 1, 2007;~~

~~(b) the 2008 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2009;~~

~~(c) the 2006 edition of the International Plumbing Code (IPC) promulgated by the International Code Council shall become effective on January 1, 2007;~~

~~(d) the 2006 edition of the International Mechanical Code (IMC) promulgated by the International Code Council shall become effective on January 1, 2007;~~

~~(e) the 2006 edition of the International Residential Code (IRC) promulgated by the International Code Council shall become effective on January 1, 2007;~~

~~(f) the 2006 edition of the International Energy Conservation Code (IECC) promulgated by the International Code Council shall become effective on January 1, 2007;~~

~~(g) the 2006 edition of the International Fuel Gas Code (IFGC) promulgated by the International Code Council shall become effective on January 1, 2007;~~

~~(h) subject to the provisions of Subsection (4), the Federal Manufactured Housing Construction and Safety Standards Act (HUD Code) as promulgated by the Department of Housing and Urban Development and published in the Federal Register as set forth in 24 CFR parts 3280 and 3282 as revised April 1, 1990;~~

~~(i) subject to the provisions of Subsection (4), Appendix E of the 2006 edition of the International Residential Code promulgated by the International Code Council shall become effective on January 1, 2007;~~

~~(j) subject to the provisions of Subsection (4), the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard promulgated by the National Fire Protection Association shall become effective January 1, 2007; and~~

~~(k) the 2006 edition of the Utah Wildland Urban Interface Code (UWUI) promulgated by the International Code Council together with alternatives or amendments approved by the Utah Division of Forestry shall be effective July 1, 2008 as an approved code that may be adopted by the local compliance agency by local ordinance or other similar action as a local amendment to the codes listed in this Subsection.~~]

(2) Approved Codes. In accordance with Subsection 58-56-4(6), and subject to the limitations contained in Subsection 58-56-4(7), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation and rehabilitation in the state:

(a) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(b) the [~~2006~~]2009 edition of the International Existing Building Code (IEBC), including its appendix chapters, promulgated by the International Code Council;

(c) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;

(d) [~~Pre-standard and Commentary for~~]ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings,[~~(FEMA 356) published by the Federal Emergency Management Agency (November 2000)~~]promulgated by the American Society of Civil Engineers, 2007 edition.[

~~(3) Amendments adopted by rule to prior editions of the Uniform Building Standards shall remain in effect until specifically amended or repealed.~~

~~(4) In accordance with Subsection 58-56-3(1)(b)(ii), the following are hereby adopted as the installation standard for manufactured housing for new installations or for existing manufactured or mobile homes which are subject to relocation, building alteration, remodeling or rehabilitation in the state:~~

~~(a) The manufacturer's installation instruction for the model being installed shall be the primary standard.~~

~~(b) If the manufacturer's installation instruction for the model being installed is not available or is incomplete, the following standards shall be applicable:~~

~~(i) Appendix E of the 2006 edition of the International Residential Code as promulgated by the International Code Council for installations defined in Section AE101 of Appendix E; or~~

~~(ii) If an installation is beyond the scope of the 2006 edition of the International Residential Code as defined in Section AE101 of Appendix E, then the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard promulgated by the National Fire Protection Association shall apply.~~

~~(c) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction Appendix E of the 2006 edition of the International Residential Code, or the 2005 edition of the NFPA 225, provided the design is approved in writing by a professional engineer or architect licensed in Utah.~~

~~(d) For mobile homes built prior to June 15, 1976, the home shall also comply with the additional installation and safety requirements specified in Section R156-56-808.~~

~~(5) Pursuant to the Federal Manufactured Home Construction and Safety Standards Section 604(d), a manufactured home may be installed in the state of Utah which does not meet the local snow load requirements as specified in Subsection R156-56-801; however all such homes which fail to meet the standards of Subsection R156-56-801 shall have a protective structure built over the home which meets the International Building Code and the snow load requirements under Subsection R156-56-801.~~

~~(6) To the extent that the building codes adopted under Subsection (1) establish local administrative functions or establish a method of appeal which pursuant to Section 58-56-8 are designated to be established by the compliance agency, such provisions are not included in the codes adopted hereunder but authority over such provisions are reserved to the compliance agency to establish such provisions.~~

~~(7) To the extent that the building codes adopted under Subsection (1) establish provisions, standards or references to other codes which by state statutes are designated to be established or administered by other state agencies or local city, town or county jurisdictions, such provisions are not included in the codes adopted herein but authority over such provisions are reserved to the agency or local government having authority over such provisions. Provisions excluded under this Subsection include but are not limited to:~~

~~(a) the International Property Maintenance Code;~~

~~(b) the International Private Sewage Disposal Code, authority over which would be reserved to the Department of Health and the Department of Environmental Quality;~~

~~(c) the International Fire Code which pursuant to Section 53-7-106 authority is reserved to the Utah Fire Prevention Board;~~

~~(d) day care provisions which are in conflict with the Child Care Licensing Act, authority over which is designated to the Utah Department of Health; and~~

~~(e) wildland urban interface provisions which go beyond the authority of Subsection 58-56-4(2), authority over which is designated to the Utah Division of Forestry or to the local compliance agencies.~~

~~(8) To the extent that the codes adopted under Subsection (1) establish provisions that exceed the authority granted to the Division, under the Utah Uniform Building Standards Act, to adopt codes or amendments to such codes by rulemaking procedures, such provisions, to the extent such authority is exceeded, are not included in the codes adopted.~~]

R156-56-[~~703~~]702. Requests for Code Amendments.

In accordance with Subsection 58-56-7(1), the procedure and manner under which requests for amendments to codes shall be filed with the [~~d~~]Division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the [~~uniform building standards~~]adopted codes or approved codes shall be submitted to the [~~d~~]Division on forms specifically prepared by the [~~d~~]Division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with [~~d~~]Division policies and procedures.

[

~~**R156-56-801. Statewide Amendments to the IBC.**~~

~~The following are adopted as amendments to the IBC to be applicable statewide:~~

~~(1) All references to the ICC Electrical Code are deleted and replaced with the National Electrical Code adopted under Subsection R156-56-701(1)(b).~~

~~(2) Section 101.4.1 is deleted and replaced with the following:~~

~~101.4.1 Electrical. The provisions of the National Electrical Code (NEC) shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.~~

~~(3) Section 106.3.2 is deleted and replaced with the following:~~

~~106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.~~

~~(4) In Section 109, a new section is added as follows:~~

~~109.3.5 Weather-resistive barrier and flashing. An inspection shall be made of the weather-resistive barrier as required~~

by Section 1403.2 and flashing as required by Section 1405.3 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections will be renumbered as follows:

109.3.6 Lath or gypsum board inspection

109.3.7 Fire-resistant penetrations

109.3.8 Energy efficiency inspections

109.3.9 Other inspections

109.3.10 Special inspections

109.3.11 Final inspection.

(5) Section 114.1 is deleted and replaced with the following:

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or other pertinent laws or ordinances or dangerous or unsafe, the building official is authorized to stop work.

(6) In Section 202, the definition for Assisted Living Facility is deleted and replaced with the following:

ASSISTED LIVING FACILITY. See Section 308.1.1.

(7) Section 305.2 is deleted and replaced with the following:

305.2 Day care. The building or structure, or portion thereof, for educational, supervision, child day care centers, or personal care services of more than four children shall be classified as a Group E occupancy. See Section 421 for special requirements for Group E child day care centers.

Exception: Areas used for child day care purposes with a Residential Certificate, Family License or Family Group License may be located in a Group R-2 or R-3 occupancy as provided in Section 310.1 or shall comply with the International Residential Code in accordance with Section 101.2.

Child day care centers providing care for more than 100 children 2 1/2 years or less of age shall be classified as Group I-4.

(8) In Section 308 the following definitions are added:

308.1.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

TYPE I ASSISTED LIVING FACILITY. A residential facility licensed by the Utah Department of Health that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

TYPE II ASSISTED LIVING FACILITY. A residential facility licensed by the Utah Department of Health that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

SEMI-INDEPENDENT. A person who is:

A. Physically disabled but able to direct his or her own care; or

B. Cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

RESIDENTIAL TREATMENT/SUPPORT ASSISTED LIVING FACILITY. A residential treatment/support assisted living facility which creates a group living environment for four or more residents licensed by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

(9) Section 308.2 is deleted and replaced with the following:

308.2 Group I-1. This occupancy shall include buildings, structures, or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following: residential board and care facilities, type I assisted living facilities, residential treatment/support assisted living facility, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as a Group R-4.

(10) Section 308.3 is deleted and replaced with the following:

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than three persons who are not capable of self-preservation. This group shall include, but not be limited to the following: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals, detoxification facilities, ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and type II assisted living facilities. Type II assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type II assisted living facilities as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility.

(11) Section 308.3.1 is deleted and replaced with the following:

308.3.1 Child care facility. A child care facility that provides care on a 24 hour basis to more than four children 2 1/2 years of age or less shall be classified as Group I-2.

(12) Section 308.5 is deleted and replaced with the following:

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with four or fewer persons shall be classified as an R-3 or shall comply with the International Residential Code in accordance with Section 101.2. Places of worship during religious functions and Group E child day care centers are not included.

(13) Section 308.5.2 is deleted and replaced with the following:

~~308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24 hour basis for more than 100 children 2 1/2 years of age or less shall be classified as Group I-4.~~

~~(14) Section 310.1 is deleted and replaced with the following:~~

~~310.1 Residential Group "R". Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classed as an Institutional Group I. Residential occupancies shall include the following:~~

~~R-1: Residential occupancies where the occupants are primarily transient in nature (less than 30 days) including: Boarding Houses (transient) and congregate living facilities, Hotels (transient), and Motels (transient).~~

~~Exception: Boarding houses and congregate living facilities accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.~~

~~R-2: Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including: Apartment Houses, Boarding houses (not transient) and congregate living facilities, Convents, Dormitories, Fraternities and Sororities, Monasteries, Vacation timeshare properties, Hotels (non transient), and Motels (non transient).~~

~~Exception: Boarding houses and congregate living facilities accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.~~

~~R-3: Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units, as applicable in Section 101.2, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours. Adult and child care facilities that are within a single family home are permitted to comply with the International Residential Code in accordance with Section 101.2. Areas used for day care purposes may be located in a residential dwelling unit under all of the following conditions:~~

~~1. Compliance with the Utah Administrative Code, R710-8, Day Care Rules, as enacted under the authority of the Utah Fire Prevention Board.~~

~~2. Use is approved by the State Department of Health, as enacted under the authority of the Utah Child Care Licensing Act, UCA, Sections 26-39-101 through 26-39-110, and in any of the following categories:~~

~~a. Utah Administrative Code, R430-50, Residential Certificate Child Care Standards.~~

~~b. Utah Administrative Code, R430-90, Licensed Family Child Care.~~

~~3. Compliance with all zoning regulations of the local regulator.~~

~~R-4: Residential occupancies shall include buildings arranged for occupancy as Residential Care/Assisted Living Facilities or Residential Treatment/Support Assisted Living Facilities including more than five but not more than 16 occupants, excluding staff.~~

~~Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code or shall comply with the International Residential Code in accordance with Section 101.2.~~

~~(15) In Section 310.2 the definition for Residential Care/Assisted Living Facilities is deleted and replaced with the following:~~

~~See Section 308.1.1.~~

~~(16) A new section 421 is added as follows:~~

~~Section 421 Group E Child Day Care Centers. Group E child day care centers shall comply with Section 421.~~

~~421.1 Location at grade. Group E child day care centers shall be located at the level of exit discharge.~~

~~Exception: Child day care spaces for children over the age of 24 months may be located on the second floor of buildings equipped with automatic fire protection throughout and an automatic fire alarm system.~~

~~421.2 Egress. All Group E child day care spaces with an occupant load of more than 10 shall have a second means of egress. If the second means of egress is not an exit door leading directly to the exterior, the room shall have an emergency escape and rescue window complying with Section 1026.~~

~~(17) In Section 504.2 a new section is added as follows:~~

~~504.2.1 Notwithstanding the exceptions to Section 504.2, Group I-2 Assisted Living Facilities shall be allowed to be two stories of Type V-A construction when all of the following apply:~~

~~1. All secured units are located at the level of exit discharge in compliance with Section 1008.1.8.3 as amended;~~

~~2. The total combined area of both stories shall not exceed the total allowable area for a one-story building; and~~

~~3. All other provisions that apply in Section 407 have been provided.~~

~~(18) In Section (F)902, the definition for record drawings is deleted and replaced with the following:~~

~~(F)RECORD DRAWINGS. Drawings ("as builts") that document all aspects of a fire protection system as installed.~~

~~(19) In Section (F)903.2.3 condition 2 is deleted and replaced with the following:~~

~~2. Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or~~

~~(20) In Section (F)903.2.6 condition 2 is deleted and replaced with the following:~~

~~2. Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or~~

~~(21) Section (F)903.2.7 is deleted and replaced with the following:~~

~~(F)903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.~~

~~Exceptions:~~

~~1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code For One- and Two-Family Dwellings.~~

~~2. Group R-4 fire areas not more than 4,500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives it primary power from the building wiring and a commercial power system.~~

(22) In Section F903.2.8 condition 2 is deleted and replaced with the following:

2. Where a Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

(23) Section (F)903.2.9 is deleted and replaced with the following:

(F)903.2.9 Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

Exception 1: Parking garages of less than 5,000 square feet (464 m^2)accessory to Group R-3 occupancies.

Exception 2: Open parking garages not located beneath other groups if one of the following conditions is met:

a. Access is provided for fire fighting operations to within 150 feet (45,720 mm) of all portions of the parking garage as measured from the approved fire department vehicle access; or

b. Class I standpipes are installed throughout the parking garage.

(24) In Section (F)903.2.9.1 the last clause "where the fire area exceeds 5,000 square feet (464 m^2)" is deleted.

(25) Section (F)904.11 and Subsections (F)904.11.3, (F)904.11.3.1, (F)904.11.4 and (F)904.11.4.1 are deleted and replaced with the following:

(F)904.11 Commercial cooking systems. The automatic fire-extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems of the type and arrangement protected. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL 300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. Automatic fire-extinguishing systems shall be installed in accordance with the referenced standard for wet-chemical extinguishing systems, NFPA 17A.

Exception: Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and listed, labeled and installed in accordance with Section 304.1 of the International Mechanical Code.

(Subsections (F)904.11.1 and (F)904.11.2 remain unchanged.

(26) Section (F)907.2.10 is deleted and replaced with the following:

(F)907.2.10 Single- and multiple-station alarms. Listed single- and multiple-station smoke alarms complying with U.L. 217 shall be installed in accordance with the provision of this code and the household fire-warning equipment provision of NFPA 72. Listed single- and multiple-station carbon monoxide detectors shall comply with U.L. 2034 and shall be installed in accordance with the provisions of this code and NFPA 720.

(F)907.2.10.1 Smoke alarms. Single- or multiple-station smoke alarms shall be installed in the locations described in Sections (F)907.2.10.1.1 through (F)907.2.10.1.3.

(F)907.2.10.1.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.

2. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.

3. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.2 Groups R-2, R-3, R-4 and I-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

2. In each room used for sleeping purposes.

3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.3 Group I-1. Single- or multiple-station smoke alarms shall be installed and maintained in sleeping areas in occupancies in Group I-1.

Exception: Single- or multiple-station smoke alarms shall not be required where the building is equipped throughout with an automatic fire detection system in accordance with Section (F)907.2.6.

(F)907.2.10.2 Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4 and I-1 equipped with fuel burning appliances.

(F)907.2.10.3. Power source. In new construction, required alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and shall be equipped with a battery backup. Alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception: Alarms are not required to be equipped with battery backup in Group R-1 where they are connected to an emergency electrical system.

(F)907.2.10.4 Interconnection. Where more than one alarm is required to be installed with an individual dwelling unit in Group R-2, R-3, or R-4, or within an individual sleeping unit in Group R-1, the alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke and carbon-monoxide detectors shall be permitted.

(F)907.2.10.5 Acceptance testing. When the installation of the alarm devices is complete, each detector and interconnecting wiring for multiple-station alarm devices shall be tested in accordance with the household fire warning equipment provisions of NFPA 72 and NFPA 720, as applicable.

(27) In Section 1007.3 a new exception 6 is added as follows:

6. Areas of refuge are not required at exit stairways in buildings or facilities equipped throughout with an automatic fire

sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(28) In Section 1007.4 the word "exception" is changed to "exception 1" and an exception 2 is added as follows:

2. Elevators are not required to be accessed from an area of refuge or horizontal exit in buildings or facilities equipped throughout with an automatic fire sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(29) In Section 1008.1.8.3, a new subparagraph (5) is added as follows:

(5) Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or automatic fire detection system.

5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

5.3 The controlled egress doors shall unlock upon loss of power.

(30) In Section 1009.3, Exception #4 is deleted and replaced with the following:

4. In Group R-3 occupancies, within dwelling units in Group R-2 occupancies, and in Group U occupancies that are accessory to a Group R-3 occupancy, or accessory to individual dwelling units in Group R-2 occupancies, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The minimum winder tread depth at the walk line shall be 10 inches (254 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 10 inches (254 mm).

(31) In Section 1009.10 Exception 6 is added as follows:

6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

(32) Section 1012.3 is amended to include the following exception at the end of the section:

Exception. Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160 mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8 mm) within 7/8 inch (22 mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10 mm) to a level that is not less than 1 3/4 inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32 mm) to a maximum of 2 3/4 inches (70 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

(33) In Section 1013.2 Exception 3 is added as follows:

3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914 mm) in height.

(34) In Section 1015.2.2 the following sentence is added at the end:

Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

(35) A new Section 1109.7.1 is added as follows:

1109.7.1 Platform (wheelchair) lifts. All platform (wheelchair) lifts shall be capable of independent operation without a key.

(36) In Section 1208.4 subparagraph 1 is deleted and replaced with the following:

1. The unit shall have a living room of not less than 165 square feet (15.3 m^2) of floor area. An additional 100 square feet (9.3 m^2) of floor area shall be provided for each occupant of such unit in excess of two.

(37) Section 1405.3 is deleted and replaced with the following:

1405.3 Flashing. Flashing shall be installed in such a manner so as to prevent moisture from entering the wall or to redirect it to the exterior. Flashings shall be installed at the perimeters of exterior door and window assemblies, penetrations and terminations of exterior wall assemblies, exterior wall intersections with roofs, chimneys, porches, decks, balconies and similar projections and at built-in gutters and similar locations where moisture could enter the wall. Flashing with projected flanges shall be installed on both sides and the ends of copings, under sills and continuously above projected trim. A flashing shall be installed at the intersection of the foundation to stucco, masonry, siding or brick veneer. The flashing shall be on an approved corrosion-resistant flashing with a 1/2" drip leg extending past exterior side of the foundation.

(38) In Section 1605.2.1, the formula shown as "f_2 = 0.2 for other roof configurations" is deleted and replaced with the following:

f_2 = 0.20 + .025(A-5) for other configurations where roof snow load exceeds 30 psf

f_2 = 0 for roof snow loads of 30 psf (1.44kN/m^2) or less.

Where A = Elevation above sea level at the location of the structure (ft/1000).

(39) In Section 1605.3.1 and section 1605.3.2, Exception number 2 in each section is deleted and replaced with the following:

2. Flat roof snow loads of 30 pounds per square foot (1.44 kNm^2) or less need not be combined with seismic loads. Where flat roof snow loads exceed 30 pounds per square foot (1.44 kNm^2), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads. W_s as calculated below, shall be combined with seismic loads.

$W_s = (0.20 + 0.025(A-5))P_f$ is greater than or equal to $0.20\ P_f$

Where

W_s = Weight of snow to be included in seismic calculations;

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

For the purpose of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor, I, used in calculating P_f may be considered 1.0 for use in the formula for W_s.

(40) In Table 1607.1 number 9 is deleted and replaced with the following:

TABLE 1607.1 NUMBER 9

Occupancy or Use	Uniform (psf)	Concentrated (lbs)
9. Decks, except residential	Same as occupancy served[h]	
9.1 Residential decks	60 psf	

(41) Section 1608.1 is deleted and replaced with the following:

1608.1 General. Except as modified in section 1608.1.1, 1608.1.2, and 1608.1.3 design snow loads shall be determined in accordance with Section 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607.

(42) Section 1608.1.1 is added as follows:

1608.1.1 Section 7.4.5 of Section 7 of ASCE 7 referenced in Section 1608.1 of the IBC is deleted and replaced with the following:

Section 7.4.5 Ice Dams and Icicles Along Eaves. Where ground snow loads exceed 75 psf, eaves shall be capable of sustaining a uniformly distributed load of $2p_f$ on all overhanging portions. No other loads except dead loads shall be present on the roof when this uniformly distributed load is applied. All building exits under down-slope eaves shall be protected from sliding snow and ice.

(43) Section 1608.1.2 is added as follows:

1608.1.2 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A-A_o)^2)^{0.5}$ for A greater than A_o, and $P_g = P_o$ for A less than or equal to A_o.

WHERE

P_g = Ground snow load at a given elevation (psf)

P_o = Base ground snow load (psf) from Table No. 1608.1.2(a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. 1608.1.2(a)

A = Elevation above sea level at the site (ft./1000)

A_o = Base ground snow elevation from Table 1608.1.2(a) (ft./1000)

The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow loads in accordance with Table 1608.1.2(b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with section 1607.11 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.

(44) Table 1608.1.2(a) and Table 1608.1.2(b) are added as follows:

TABLE NO. 1608.1.2(a)
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P_o	S	A_o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

TABLE NO. 1608.1.2(b)
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

		Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			
Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43
Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43
Emery County			
Castledale	5660 ft.	30	43

Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43
Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43
West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43
Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6800 ft.	100	142
Park City	8400 ft.	162	231
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

NOTES

(1) The IBC requires a minimum live load - See 1607.11.2.

(2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

(45) Section 1608.1.3 is added as follows:

1608.1.3 Thermal Factor. The value for the thermal factor, C_t, used in calculation of p_f shall be determined from Table 7.3 in ASCE 7.

Exception: Except for unheated structures, the value of C_t need not exceed 1.0 when ground snow load, P_g is calculated using Section 1608.1.2 as amended.

(46) Section 1608.2 is deleted and replaced with the following:

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

(47) In Section 1609.1.1 a new exception number 5 is added as follows:

5. The wind design procedure as found in Section 1616 through 1624 of the 1997 Uniform Building Code may be used as an alternative wind design procedure for:

(a) items 1 through 3 listed in Table 16-H of the 1997 Uniform Building Code provided that the building or component being designed meets the limits for the Simplified Method as defined in ASCE 6.4.1.1 and 6.4.1.2 of ASCE 7; or

(b) items 4 through 7 listed in Table 16-H of the 1997 Uniform Building Code.

The Importance Factor, I, shall be determined in accordance with Table 6-1 of ASCE 7.

(48) Section 1613.7 is added as follows:

1613.7 ASCE 12.7.2 and 12.14.18.1 of Section 12 of ASCE 7 referenced in Section 1613.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Where the flat roof snow load, P_f, exceeds 30 psf, the snow load included in seismic design shall be calculated, in accordance with the following formula: $W_s = (0.20 + 0.025(A-5))P_f$ is greater than or equal to $0.20\ P_f$

WHERE:

W_s = Weight of snow to be included in seismic calculations;

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

For the purposes of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor, I, used in calculating P_f may be considered 1.0 for use in the formula for W_s.

(49) A new Section 1613.8 is added as follows:

1613.8 ASCE 7, Section 13.5.6.2.2 paragraph (e) is modified to read as follows:

(e) Penetrations shall have a sleeve or adapter through the ceiling tile to allow for free movement of at least 1 inch (25 mm) in all horizontal directions.

Exceptions:

1. Where rigid braces are used to limit lateral deflections.

2. At fire sprinkler heads in frangible surfaces per NFPA 13.

(50) Section 1805.5 is deleted and replaced with the following:

1805.5 Foundation walls. Concrete and masonry foundation walls shall be designed in accordance with Chapter 19 or 21, respectively. Foundation walls that are laterally supported at the top and bottom and within the parameters of Tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section 1805.5.8.

(51) A new section 1805.5.8 is added as follows:

1805.5.8 Empirical foundation design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, shall be permitted to have concrete foundations constructed in accordance with Table 1805.5(6).

(52) Table 1805.5(6) is added as follows:

Table 1805.5(6), entitled "Empirical Foundation Walls, dated January 1, 2007, published by the Department of Commerce, Division of Occupational and Professional Licensing is hereby adopted and incorporated by reference. Table 1805.5(6) identifies foundation requirements for empirical walls.

(53) A new section 2306.1.5 is added as follows:

2306.1.5 Load duration factors. The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Frequently Used Load Duration Factors, C_d, of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1524 M).

(54) In Section 2308.6 the following exception is added:

Exception: Where foundation plates or sills are bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors, embedded at least 7 inches (178 mm) into concrete or masonry and spaced not more than 32 inches (816 mm) apart, there shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece. A properly sized nut and washer shall be tightened on each bolt to the plate.

(55) Section 2506.2.1 is deleted and replaced with the following:

2506.2.1 Other materials. Metal suspension systems for acoustical and lay-in panel ceilings shall conform with ASTM C635 listed in Chapter 35 and Section 13.5.6 of ASCE 7-05, as amended in Section 1613.8, for installation in high seismic areas.

(56) In Section 2902.1, the title for Table 2902.1 is deleted and replaced with the following and footnote e is added as follows: Table 2902.1, Minimum Number of Required Plumbing Facilities[a, e].

FOOTNOTE: e. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(57) Section 3006.5 Shunt Trip, the following exception is added:

Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.

(58) A new section 3403.2.4 is added as follows:

3403.2.4 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with 75% of the seismic forces as specified in Section 1613. When allowed by the local building official, alternate methods of equivalent strength as referenced in Subsection R156-56-701(2) will be considered when accompanied by engineer sealed drawings, details and calculations. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.

EXCEPTIONS:

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

(59) Section 3406.4 is deleted and replaced with the following:

3406.4 Change in Occupancy. When a change in occupancy results in a structure being reclassified to a higher Occupancy Category (as defined in Table 1604.5), or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. Specific seismic detailing requirements of this code or ASCE 7 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the existing and retrofit (if any) detailing providing. Alternatively, the building official may allow the structure to be upgraded in accordance with referenced sections as found in Subsection R156-56-701(2).

2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located in a seismic map area where S_{DS} is less than 0.33, compliance with the seismic requirements of this code and ASCE 7 are not required.

3. Where design occupant load increase is less than 25 occupants and the Occupancy Category does not change.

(60) The exception in 3409.1 is deleted and replaced with the following:

Exception: Type B dwelling or sleeping units required by section 1107 are not required to be provided in existing buildings and facilities, except when an existing occupancy is changed to R-2.

(61) In Section 3409.4, number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy as determined in section 1107.6.2, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling or sleeping units shall be Type A dwelling units.

(62) The following referenced standard is added under NFPA in chapter 35:

TABLE

Number	Title	Referenced in code Section number
720-05	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	907.2.10, 907.2.10.5

R156-56-802. Statewide Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable statewide:

(1) All statewide amendments to the IBC under Section R156-56-801, the NEC under Section R156-56-806, the IPC under Section R156-56-803, the IMC under Section R156-56-804, the IFGC under Section R156-56-805 and the IECC under Section R156-56-807 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC. All references to the ICC Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b).

(2) Section 106.3.2 is deleted and replaced with the following:

106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.

(3) In Section 109, a new section is added as follows:

R109.1.5 Weather-resistive barrier and flashing inspections. An inspection shall be made of the weather-resistive barrier as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections are renumbered as follows:

R109.1.6 Other inspections

R109.1.6.1 Fire-resistance-rated construction inspection

R109.1.6.2 Reinforced masonry, insulating concrete form (ICF) and conventionally formed concrete wall inspection

R109.1.7 Final inspection.

(4) Section R114.1 is deleted and replaced with the following:

R114.1 Notice to owner. Upon notice from the building official that work on any building or structured is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(5) In Section R202, the definition of "Backsiphonage" is deleted and replaced with the following:

BACKSIPHONAGE: The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(6) In Section R202 the following definition is added:

CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(7) In Section R202 the definition of "Cross Connection" is deleted and replaced with the following:

CROSS CONNECTION. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems(see "Backflow, Water Distribution").

(8) In Section R202 the following definition is added:

HEAT exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(9) In Section R202 the definition of "Potable Water" is deleted and replaced with the following:

POTABLE WATER. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(10) In Section R202, the following definition is added:

S-Trap. A trap having it's weir installed above the inlet of the vent connection.

(11) In Section R202 the definition of "Water Heater" is deleted and replaced with the following:

WATER HEATER. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use externally to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(12) Figure R301.2(5) is deleted and replaced with Table R301.2(5a) and Table R301.2(5b) as follows:

TABLE NO. R301.2(5a)
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P_g	S	A_g
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0

Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

TABLE NO. R301.2(5b)
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

		Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			
Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43
Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43
Emery County			
Castledale	5660 ft.	30	43
Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43
Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43
West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43
Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6800 ft.	100	142
Park City	8400 ft.	162	231
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

NOTES
(1) The IRC requires a minimum live load - See R301.6.
(2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

(13) Section R301.6 is deleted and replaced with the following:

R301.6 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_\theta^2 + S^2(A-A_\theta)^2)^{0.5}$ for A greater than A_θ, and $P_g = P_\theta$ for A less than or equal to A_θ.

WHERE

P_g = Ground snow load at a given elevation (psf)

P_θ = Base ground snow load (psf) from Table No. R301.2(5a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. R301.2(5a)

A = Elevation above sea level at the site (ft./1000)

~~A_e = Base ground snow elevation from Table R301.2(5a) (ft./1000)~~

~~The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.~~

~~The building official may also directly adopt roof snow loads in accordance with Table R301.2(5b), provided the site is no more than 100 ft. higher than the listed elevation.~~

~~Where the minimum roof live load in accordance with Table R301.6 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.~~

~~(14) Section R304.3 is deleted and replaced with the following:~~

~~R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.~~

~~Exception: Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.~~

~~(15) Section R311.5.3 is deleted and replaced with the following:~~

~~R311.5.3 Stair treads and risers.~~

~~R311.5.3.1 Riser height. The maximum riser height shall be 8 inches (203 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).~~

~~R311.5.3.2 Tread depth. The minimum tread depth shall be 9 inches (228 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12 inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).~~

~~R311.5.3.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.~~

~~Exceptions.~~

~~1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).~~

~~2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.~~

~~(16) Section R313 is deleted and replaced with the following:~~

~~Section R313 SMOKE AND CARBON MONOXIDE ALARMS~~

~~R313.1 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in the following locations:~~

~~1. In each sleeping room.~~

~~2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.~~

~~3. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.~~

~~All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provision of NFPA 72.~~

~~R313.2 Carbon monoxide alarms. In new residential structures regulated by this code that are equipped with fuel burning appliances, carbon monoxide alarms shall be installed on each habitable level. All carbon monoxide detectors shall be listed and comply with U.L. 2034 and shall be installed in accordance with provisions of this code and NFPA 720.~~

~~R313.3 Interconnection of alarms. When multiple alarms are required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke- and carbon-monoxide detectors shall be permitted.~~

~~R313.4 Power source. In new construction, the required alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Alarms shall be permitted to be battery operated when installed in buildings without commercial power or in buildings that undergo alterations, repairs, or additions regulated by Section R313.5~~

~~R313.5 Alterations, repairs and additions. When interior alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be provided with alarms located as required for new dwellings; the alarms shall be interconnected and hard wired.~~

~~Exceptions:~~

~~1. Alarms in existing areas shall not be required to be interconnected and hard wired where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.~~

2. Repairs to the exterior surfaces of dwellings are exempt from the requirements of this section.

(17) In Section R403.1.6 exception 4 is added as follows:

4. When anchor bolt spacing does not exceed 32 inches (813 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(18) In Section R403.1.6.1 the following exception is added at the end of Item 2 and Item 3:

Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(19) New Sections R404.0, R404.0.1 and R404.0.2 are added before Section 404.1 as follows:

R404.0 This section may be used as an alternative to complying with Sections R404.1 through R404.1.5.1.

R404.0.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls may be designed in accordance with IBC Chapters 19 or 21 respectively. Foundation walls that are laterally supported at the top and bottom within the parameters of IBC Tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with IBC Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section R404.0.2.

R404.0.2 Empirical foundation design. Buildings constructed with repetitive wood frame construction or repetitive cold-formed steel structural member construction may be permitted to have concrete foundations constructed in accordance with IBC Table 1805.5(6). IBC Table 1805.5(6) entitled "Empirical Foundations Walls", dated January 1, 2007, published by the Department of Commerce, Division of Occupational and Professional Licensing, is hereby adopted and incorporated by reference. Table 1805.5(6) identifies foundation requirements for empirical walls.

(20) Section R703.6 is deleted and replaced with the following:

R703.6 Exterior plaster.

R703.6.1 Lath. All lath and lath attachments shall be of corrosion-resistant materials. Expanded metal or woven wire lath shall be attached with 1 1/2 inch-long (38 mm), 11 gage nails having 7/16 inch (11.1 mm) head, or 7/8-inch-long (22.2 mm), 16 gage staples, spaced at no more than 6 inches (152 mm), or as otherwise approved.

R703.6.2 Weather-resistant barriers. Weather-resistant barriers shall be installed as required in Section R703.2 and, where applied over wood-based sheathing, shall include a weather-resistive vapor permeable barrier with a performance at least equivalent to two layers of Grade D paper.

R703.6.3 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry, concrete or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completely concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). On wood-frame construction with an on-grade floor slab system, exterior plaster shall be applied in such a manner as to cover, but not extend below, lath, paper and screed.

The proportion of aggregate to cementitious materials shall be as set forth in Table R702.1(3).

R703.6.3.1 Weep screeds. A minimum 0.019-inch (0.5 mm) (No. 26 galvanized sheet gage), corrosion-resistant weep screed or plastic weep screed, with a minimum vertical attachment flange of 3 1/2 inches (89 mm) shall be provided at or below the foundation plate line on exterior stud walls in accordance with ASTM C 926. The weep screed shall be placed a minimum of 4 inches (102 mm) above the earth or 2 inches (51 mm) above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building. The weather-resistant barrier shall lap the attachment flange. The exterior lath shall cover and terminate on the attachment flange of the weep screed.

(21) In Section R703.8, number 8 is added as follows:

8. At the intersection of foundation to stucco, masonry, siding, or brick veneer with an approved corrosive-resistance flashing with a 1/2" drip leg extending past exterior side of the foundation.

(22) A new Section G2401.2 is added as follows:

G2401.2 Meter Protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must provide access for service and comply with the IBC or the IRC.

(23) Section P2602.3 is added as follows:

P2602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(24) Section P2602.4 is added as follows:

P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann, (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317, Chapter 4, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(25) Section P2603.2.1 is deleted and replaced with the following:

P2603.2.1 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters, or similar members less than 1 1/2 inch (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be a minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(26) In Section P2801.7 the word townhouses is deleted.

(27) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(28) Table P2902.3 is deleted and replaced with the following:

TABLE P2902.3
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table P2902.3.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Atmospheric Vacuum Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1	High or Low	Backsiphonage	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves. e. The AVB shall be installed in a vertical position only.

General Installation Criteria	The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official. Assemblies shall be maintained as an intact assembly.

(29) Table 2902.3a is added as follows:

TABLE 2902.3a
Specialty Backflow Devices for low-hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1022
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

(30) Section P3003.2.1 is added as follows:

Section P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(31) In Section P3103.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(32) In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

(33) Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE

USC-FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531		Table P2902.3

(34) In Chapter 43, the following standard is added under NFPA as follows:

TABLE

720-05	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment		R313.2

R156-56-803. Statewide Amendments to the IPC.

The following are adopted as amendments to the IPC to be applicable statewide:

(1) In Section 202, the definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

(2) In Section 202, the definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system

as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(3) In Section 202, the following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(4) In Section 202, the definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

(5) In Section 202, the following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(6) In Section 202, the definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(7) In Section 202, the following definition is added:

S-Trap. A trap having its weir installed above the inlet of the vent connection.

(8) In Section 202, the definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(9) Section 304.3 Meter Boxes is deleted.

(10) Section 305.5 is deleted and replaced with the following:

305.5 Pipes through or under footings or foundation walls. Any pipe that passes under or through a footing or through a foundation wall shall be protected against structural settlement.

(11) Section 305.8 is deleted and replaced with the following:

305.8 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters or similar members less than 1 1/2 inches (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(12) Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(13) Section 311.1 is deleted.

(14) Section 312.9 is deleted in its entirety and replaced with the following:

312.9 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(15) In Section 403.1 footnote c is added as follows:

FOOTNOTE: c. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(16) In Section 406.3, an exception is added as follows:

Exception: Gravity discharge clothes washers, when properly trapped and vented, shall be allowed to be directly connected to the drainage system or indirectly discharge into a properly sized catch basin, trench drain, or other approved indirect waste receptor installed for the purpose of receiving such waste.

(17) A new section 406.4 is added as follows:

406.4 Automatic clothes washer metal safe pans. Metal safe pans, when installed under automatic clothes washers, shall only be allowed to receive the unintended discharge from a leaking appliance, valve, supply hose, or overflowing waste water from the clothes washer standpipe. Clothes washer metal safe pans shall not be used as indirect waste receptors to receive the discharge of waste water from any other equipment, appliance, appurtenance, drain pipe, etc. Each safe pan shall be provided with an approved trap seal primer, conforming to ASSE 1018 or 1044 or a deep seal trap. The sides of the safe pan shall be no less than 1 1/2" high and shall be soldered at the joints to provide a water tight seal.

406.4.1 Safe pan outlet. The safe pan outlet shall be no less than 1 1/2" in diameter and shall be located in a visible and accessible location to facilitate cleaning and maintenance. The outlet shall be flush with the surface of the pan so as not to allow water retention within the pan.

(18) Section 412.1 is deleted and replaced with the following:

412.1 Approval. Floor drains shall be made of ABS, PVC, cast-iron, stainless steel, brass, or other approved materials that are listed for the use.

(19) Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one floor drain.

(20) Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1M, ASME A112.19.2M, ASME A112.19.3M, ASME A112.19.4M, ASME A112.19.9M, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

(21) Section 504.6.2 is deleted and replaced with the following:

504.6.2 Material. Relief valve discharge piping shall be of those materials listed in Tables 605.4 and 605.5 and meet the requirements for Sections 605.4 and 605.5 or shall be tested, rated and approved for such use in accordance with ASME A112.4.1. Piping from safety pan drains shall meet the requirements of Section 804.1 and be constructed of those materials listed in Section 702.

(22) Section 504.7.2 is deleted and replaced with the following:

504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate over a suitably located indirect waste receptor, floor drain or extend to the exterior of the building and terminate not less than 6 inches (152 mm) and not more than 24 inches (610 mm) above the adjacent ground surface. When permitted by the administrative authority, the pan drain may be directly connected to a soil stack, waste stack, or branch drain. The pan drain shall be individually trapped and vented as required in Section 907.1. The pan drain shall not be directly or indirectly connected to any vent. The trap shall be provided with a trap primer conforming to ASSE 1018 or ASSE 1044.

(23) A new section 504.7.3 is added as follows:

504.7.3 Pan Designation. A water heater pan shall be considered an emergency receptor designated to receive the discharge of water from the water heater only and shall not receive the discharge from any other fixtures, devises or equipment.

(24) Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1, 73-3-3, and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

(25) Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

(26) Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(27) Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

(28) Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

(29) In Section 608.1, the following sentence is added at the end of the paragraph:

Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

(30) Table 608.1 is deleted and replaced with the following:

TABLE 608.1
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.

			c. Shall not be installed below ground or in a vault or pit.
			d. Shall be installed in a vertical position only.
Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.
			b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.
			c. Shall not be installed below ground or in a vault or pit.
			d. Shall be installed in a vertical position only.
Atmospheric Vacuum Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1	High or Low	Backsiphonage	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.
			b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time.
			c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use.
			d. Shall be installed on the discharge (downstream) side of any valves.
			e. The AVB shall be installed in a vertical position only.
General Installation Criteria			The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance.
			In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.
			Assemblies shall be maintained as an intact assembly.

(31) Table 608.1.1 is added as follows:

TABLE 608.1.1
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1022
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

(32) In Section 608.3.1, the following sentence is added at the end of the paragraph:

All piping and hoses shall be installed below the atmospheric vacuum breaker.

(33) Section 608.7 is deleted in its entirety.

(34) In Section 608.8, the following sentence is added at the end of the paragraph:

In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

(35) In Section 608.11, the following sentence is added at the end of the paragraph:

The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

(36) Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

(37) Section 608.13.4 is deleted in its entirety.

(38) Section 608.13.9 is deleted in its entirety.

(39) Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

(40) Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

(41) Section 608.15.4.2 is deleted and replaced with the following:

608.15.4.2 Hose connections. Sillcocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric-type or pressure-type vacuum breaker or a permanently attached hose connection vacuum breaker. Add-on-type backflow prevention devices shall be non-removable. In climates where freezing temperatures occur, a listed self-draining frost proof hose bibb with an integral backflow preventer shall be used.

(42) In Section 608.16.2, the first sentence of the paragraph is deleted and replaced as follows:

608.16.2 Connections to boilers. The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

(43) Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the two walls.

Exceptions:

1. Single wall heat exchangers shall be permitted when all of the following conditions are met:

a. It utilizes a heat transfer medium of potable water or contains only substances which are recognized as safe by the United States Food and Drug Administration (FDA);

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers.

(44) In Section 608.16.4.1, add the following exception:

Exception: All class 1 and 2 systems containing chemical additives consisting of strictly glycerine (C.P. or U.S.P. 96.5 percent grade) or propylene glycol shall be protected against backflow with a double check valve assembly. Such systems shall include written certification of the chemical additives at the time of original installation and service or maintenance.

(45) Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(46) Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

(47) Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(48) Section 608.16.11 is added as follows:

608.16.11 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

(49) Section 608.17 is deleted in its entirety.

(50) Section 701.2 is deleted and replaced with the following:

701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code

Ann., (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-4, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(51) Section 802.3.2 is deleted in its entirety and replaced with the following:

802.3.2 Open hub waste receptors. Waste receptors for clear water waste shall be permitted in the form of a hub or pipe extending not more than 1/2 inch above a water impervious floor and are not required to have a strainer.

(52) Section 901.3 is deleted and replaced with the following:

901.3 Chemical waste vent system. The vent system for a chemical waste system shall be independent of the sanitary vent system and shall terminate separately through the roof to the open air or to an air admittance valve provided at least one chemical waste vent in the system terminates separately through the roof to the open air.

(53) Section 904.1 is deleted and replaced with the following:

904.1 Roof extensions. All open vent pipes that extend through a roof shall be terminated at least 12 inches (304.8 mm) above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extension shall be run at least 7 feet (2134 mm) above the roof.

(54) In Section 904.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(55) In Section 905.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed in accordance with Sections 702.2, 905.2 and 905.3 and provided with a wall clean out.

(56) In Section 917.8 the following exception is added:

Exception: Air admittance valves shall be permitted in non-neutralized special waste systems provided that they conform to the requirements in Sections 901.3 and 702.5, are tested to ASTM F1412, and are certified by ANSI/ASSE.

(57) Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited.

(58) Section 1108 is deleted in its entirety.

(59) The Referenced Standard NFPA 99c-02 in Chapter 13 is deleted and replaced with NFPA 99c-05.

(60) The Referenced Standard NSF-2003c in Chapter 13 is amended to add Section 608.11 to the list of Referenced in code section number.

(61) In Chapter 13, Referenced Standards, the following referenced standard is added:

TABLE

USC-FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table 608.1

(62) Appendix C of the IPC, Gray Water Recycling Systems as amended herein shall not be adopted by any local jurisdiction until such jurisdiction has requested Appendix C as amended to be adopted as a local amendment and such local amendment has been approved as a local amendment under these rules.

(63) In jurisdictions which have adopted Appendix C as amended as a local amendment as provided herein, Section 301.3 of the IPC is deleted and replaced with the following:

301.3 Connection to the drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the drainage system of the building or premises, in accordance with the requirements of this Code. This section shall not be construed to prevent indirect waste systems provided for in Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry sinks shall not be required to discharge to the sanitary drainage system where such fixtures discharge to a gray water recycling system meeting all the requirements as specified in Appendix C as amended by these rules.

(64) Appendix C is deleted and replaced with the following, to be effective only in jurisdictions which have adopted Appendix C as amended as a local amendment under these rules:

Appendix C, Gray Water Recycling Systems, C101 Gray Water Recycling Systems

C101.1 General, recycling gray water within a building. In R1, R2 and R4 occupancies and one- and two-family dwellings, gray water recycling systems are prohibited.

In commercial occupancies, recycled gray water shall only be utilized for the flushing of water closets and urinals that are located in the same building as the gray water recycling system, provided the following conditions are met:

1. Such systems comply with Sections C101.1 through C101.14 as amended by these rules.

2. The commercial establishment demonstrates that it has and will have qualified staff to oversee the gray water recycling systems. Qualified staff is defined as level 3 waste water treatment plan operator as specified by the Department of Environmental Quality.

3. Gray water recycling systems shall only receive non hazardous waste discharge of bathtubs, showers, lavatories, clothes washers and laundry sinks such as chemicals having a pH of 6.0 to 9.0, or non flammable or non combustible liquids, liquids without objectionable odors, non-highly pigmented liquids, or other liquids that will not interfere with the operation of the sewer treatment facilities.

~~C101.2 Permit required. A permit for any gray water recycling system shall not be issued until complete plans prepared by a licensed engineer, with appropriate data satisfactory to the Code Official, have been submitted and approved. No changes or connections shall be made to either the gray water recycling system or the potable water system within any site containing a gray water recycling system, without prior approved by the Code Official. A permit may also be required by the local health department to monitor compliance with this appendix for system operator standards and record keeping.~~

~~C101.3 Definition. The following term shall have the meaning shown herein.~~

~~GRAY WATER. Waste water discharged from lavatories, bathtubs, showers, clothes washers and laundry sinks.~~

~~C101.4 Installation. All drain, waste and vent piping associated with gray water recycling systems shall be installed in full compliance with this code.~~

~~C101.5 Gray Water Reservoir. Gray water shall be collected in an approved reservoir construction of durable, nonabsorbent and corrosion-resistant materials. The reservoir shall be a closed and gas-tight vessel. Gas tight access openings shall be provided to allow inspection and cleaning of the reservoir interior. The holding capacity of the reservoir shall be a minimum of twice the volume of water required to meet the daily flushing requirements of the fixtures supplied by the gray water, but not less than 50 gallons (189 L). The reservoir shall be sized to limit the retention time of gray water to 72 hours maximum.~~

~~C101.6 Filtration. Gray water entering the reservoir shall pass through an approved cartridge filter or other method approved by the Code Official.~~

~~C101.7 Disinfection. Gray water shall be disinfected by an approved method that employs one or more disinfectants such as chlorine, iodine or ozone. A minimum of 1 ppm free residual chlorine shall be maintained in the gray water recycling system reservoir. Such disinfectant shall be automatically dispensed. An alarm shall be provided to shut down the gray water recycling system if disinfectant levels are not maintained at the required levels.~~

~~C101.8 Makeup water. Potable water shall be supplied as a source of makeup water for the gray water recycling system. The potable water supply to any building with a gray water recycling system shall be protected against backflow by an RP backflow assembly installed in accordance with this code. There shall be full-open valve on the makeup water supply to the reservoir. The potable water supply to the gray water reservoir shall be protected by an air gap installed in accordance with this code.~~

~~C101.9 Overflow. The reservoir shall be equipped with an overflow pipe of the same diameter as the influent pipe for the gray water. The overflow shall be directly connected to the sanitary drainage system.~~

~~C101.10 Drain. A drain shall be located at the lowest point of the reservoir and shall be directly connected to the sanitary drainage system. The drain shall be the same diameter as the overflow pipe required by Section C101.9 and shall be provided with a full-open valve.~~

~~C101.11 Vent required. The reservoir shall be provided with a vent sized in accordance with Chapter 9 based on the size of the reservoir influent pipe.~~

~~C101.12 Coloring. The gray water shall be automatically dyed blue or green with a food grade vegetable dye before such water is supplied to the fixtures.~~

~~C101.13 Identification. All gray water distribution piping and reservoirs shall be identified as containing non-potable water. Gray water recycling system piping shall be permanently colored purple or continuously wrapped with purple-colored Mylar tape. The tape or permanently colored piping shall be imprinted in black, upper case letters with the words "CAUTION: GRAY WATER, DO NOT DRINK."~~

~~All equipment areas and rooms for gray water recycling system equipment shall have a sign posted in a conspicuous place with the following text: TO CONSERVE WATER, THIS BUILDING USES GRAY WATER TO FLUSH TOILETS AND URINALS, DO NOT CONNECT TO THE POTABLE WATER SYSTEM. The location of the signage shall be determined by the Code Official.~~

~~C101.14 Removal from service. All gray water recycling systems that are removed from service shall have all connections to the reservoir capped and routed back to the building sewer. All gray water distribution lines shall be replaced with new materials.~~

~~C201.1 Outside the building. Gray water reused outside the building shall comply with the requirements of the Department of Environmental Quality Rule R317.~~

~~R156-56-804. Statewide Amendments to the IMC.~~

~~The following are adopted as amendments to the IMC to be applicable statewide:~~

~~R156-56-805. Statewide Amendments to the IFGC.~~

~~The following are adopted as amendments to the IFGC to be applicable statewide:~~

~~(1) The following paragraph is added at the end of Section 305.1~~

~~305.1 General. After natural gas, space and water heating appliances have been adjusted for altitude and the Btu content of the natural gas, the installer shall apply a sticker in a visible location indicating that the proper adjustments to such appliances have been made. The adjustments for altitude and the Btu content of the natural gas shall be done in accordance with the manufacturer's installation instructions and the gas utility's approved practices.~~

~~(2) Chapter 4, Section 401 General, a new section 401.9 is added as follows:~~

~~401.9 Meter protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must still provide access for service and comply with the IBC or the IRC.~~

~~R156-56-806. Statewide Amendments to the NEC.~~

~~The following are adopted as amendments to the NEC to be applicable statewide:~~

~~R156-56-807. Statewide Amendments to the IECC.~~

~~The following are adopted as amendments to the IECC to be applicable statewide:~~

~~(1) In Section 504.4, the following exception is added:~~

~~Exception: Heat traps, other than the arrangement of piping and fittings, shall be prohibited unless a means of controlling thermal expansion can be ensured as required in the IPC Section 607.3.~~

~~R156-56-808. Installation and Safety Requirements for Mobile Homes Built Prior to June 15, 1976.~~

~~(1) Mobile homes built prior to June 15, 1976 which are subject to relocation, building alteration, remodeling or rehabilitation shall comply with the following:~~

~~(a) Exits and egress windows~~

~~(i) Egress windows. The home has at least one egress window in each bedroom, or a window that meets the minimum specifications of the U.S. Department of Housing and Urban Development's (HUD) Manufactured Homes Construction and Safety Standards (MHCSS) program as set forth in 24 C.F.R. Parts 3280, 3283 and 3283, MHCSS 3280.106 and 3280.404 for manufactured homes. These standards require the window to be at least 22 inches in the horizontal or vertical position in its least dimension and at least five square feet in area. The bottom of the window opening shall be no more than 36 inches above the floor, and the locks and latches and any window screen or storm window devices that need to be operated to permit exiting shall not be located more than 54 inches above the finished floor.~~

~~(ii) Exits. The home is required to have two exterior exit doors, located remotely from each other, as required in MHCSS 3280.105. This standard requires that single-section homes have the doors no less than 12 feet, center-to-center, from each other, and multisection home doors no less than 20 feet center-to center from each other when measured in a straight line, regardless of the length of the path of travel between the doors. One of the required exit doors must be accessible from the doorway of each bedroom and no more than 35 feet away from any bedroom doorway. An exterior swing door shall have a 28-inch-wide by 74-inch-high clear opening and sliding glass doors shall have a 28-inch-wide by 72-inch-high clear opening. Each exterior door other than screen/storm doors shall have a key-operated lock that has a passage latch; locks shall not require the use of a key or special tool for operation from the inside of the home.~~

~~(b) Flame spread~~

~~(i) Walls, ceilings and doors. Walls and ceilings adjacent to or enclosing a furnace or water heater shall have an interior finish with a flame-spread rating not exceeding 25. Sealants and other trim materials two inches or less in width used to finish adjacent surfaces within these spaces are exempt from this provision, provided all joints are supported by framing members or materials with a flame spread rating of 25 or less. Combustible doors providing interior or exterior access to furnace and water heater spaces shall be covered with materials of limited combustibility (i.e. 5/16-inch gypsum board, etc.), with the surface allowed to be interrupted for louvers ventilating the space. However, the louvers shall not be of materials of greater combustibility than the door itself (i.e., plastic louvers on a wooden door). Reference MHCSS 3280.203.~~

~~(ii) Exposed interior finishes. Exposed interior finishes adjacent to the cooking range (surfaces include vertical surfaces between the range top and overhead cabinets, the ceiling, or both) shall have a flame-spread rating not exceeding 50, as required by MHCSS 3280.203. Backsplashes not exceeding six inches in height are exempted. Ranges shall have a vertical clearance above the cooking top of not less than 24 inches to the bottom of combustible cabinets, as required by MHCSS 3280.204(e).~~

~~(c) Smoke detectors~~

~~(i) Location. A smoke detector shall be installed on any ceiling or wall in the hallway or space communicating with each bedroom area between the living area and the first bedroom door, unless a door separates the living area from that bedroom area, in which case the detector shall be installed on the living-area side, as close to the door as practicable, as required by MHCSS 3280.208. Homes with bedroom areas separated by anyone or combination of common-use areas such as a kitchen, dining room, living room, or family room (but not a bathroom or utility room) shall be required to have one detector for each bedroom area. When located in the hallways, the detector shall be between the return air intake and the living areas.~~

~~(ii) Switches and electrical connections. Smoke detectors shall have no switches in the circuit to the detector between the over-current protection device protecting the branch circuit and the detector. The detector shall be attached to an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. The detector shall not be placed on the same branch circuit or any circuit protected by a ground-fault circuit interrupter.~~

~~(d) Solid-fuel-burning stoves/fireplaces~~

~~(i) Solid-fuel-burning fireplaces and fireplace stoves. Solid-fuel-burning, factory-built fireplaces and fireplace stoves may be used in manufactured homes, provided that they are listed for use in manufactured homes and installed according to their listing/manufacturer's instructions and the minimum requirements of MHCSS 3280.709(g).~~

~~(ii) Equipment. A solid-fuel-burning fireplace or fireplace stove shall be equipped with an integral door or shutters designed to close the fire chamber opening and shall include complete means for venting through the roof, a combustion air inlet, a hearth extension, and means to securely attach the unit to the manufactured home structure.~~

~~(A) Chimney. A listed, factory-built chimney designed to be attached directly to the fireplace/fireplace stove and equipped with, in accordance with the listing, a termination device and spark arrester, shall be required. The chimney shall extend at least three feet above the part of the roof through which it passes and at least two feet above the highest elevation of any part of the manufactured home that is within 10 feet of the chimney.~~

~~(B) Air-intake assembly and combustion-air inlet. An air-intake assembly shall be installed in accordance with the terms of listings and the manufacturer's instruction. A combustion air inlet shall conduct the air directly into the fire chamber and shall be designed to prevent material from the hearth from dropping on the area beneath the manufactured home.~~

~~(C) Hearth. The hearth extension shall be of noncombustible material that is a minimum of 3/8-inch thick and shall extend a minimum of 16 inches in front and eight inches beyond each side of the fireplace/fireplace stove opening. The hearth shall also extend over the entire surface beneath a fireplace stove and beneath an elevated and overhanging fireplace.~~

~~(e) Electrical wiring systems~~

~~(i) Testing. All electrical systems shall be tested for continuity in accordance with MHCSS 3280.810, to ensure that~~

~~metallic parts are properly bonded; tested for operation, to demonstrate that all equipment is connected and in working order; and given a polarity check, to determine that connections are proper.~~

~~(ii) 5.2 Protection. The electrical system shall be properly protected for the required amperage load. If the unit wiring employs aluminum conductors, all receptacles and switches rated at 20 amperes or less that are directly connected to the aluminum conductors shall be marked CO/ALA. Exterior receptacles, other than heat tape receptacles, shall be of the ground-fault circuit interrupter (GFI) type. Conductors of dissimilar metals (copper/aluminum or copper-clad aluminum) must be connected in accordance with National Electrical Code (NEC) Section 110-14.~~

~~(f) Replacement furnaces and water heaters~~

~~(i) Listing. Replacement furnaces or water heaters shall be listed for use in a manufactured home. Vents, roof jacks, and chimneys necessary for the installation shall be listed for use with the furnace or water heater.~~

~~(ii) Securement and accessibility. The furnace and water heater shall be secured in place to avoid displacement. Every furnace and water heater shall be accessible for servicing, for replacement, or both as required by MHCSS 3280.709(a).~~

~~(iii) Installation. Furnaces and water heaters shall be installed to provide complete separation of the combustion system from the interior atmosphere of the manufactured home, as required by MHCSS.~~

~~(A) Separation. The required separation may be achieved by the installation of a direct-vent system (sealed combustion system) furnace or water heater or the installation of a furnace and water heater venting and combustion systems from the interior atmosphere of the home. There shall be no doors, grills, removable access panels, or other openings into the enclosure from the inside of the manufactured home. All openings for ducts, piping, wiring, etc., shall be sealed.~~

~~(B) Water heater. The floor area in the area of the water heater shall be free from damage from moisture to ensure that the floor will support the weight of the water heater.~~]

R156-56-[~~820~~]801. Statewide Amendments to the IEBC.

The following are adopted as amendments to the IEBC to be applicable statewide:

(1) In Section 101.5 the exception is deleted.

(2) [~~Section R106.3.2 is deleted and replaced with the following:~~

~~R106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.~~

~~(3)~~]In Section 202 the definition for existing buildings is deleted and replaced with the following:

EXISTING BUILDING. A building lawfully erected [~~prior to January 1, 2002~~]under a prior adopted code, or one which is deemed a legal non-conforming building by the code official, and one which is not a dangerous building.

(3) In Section 605.1, Exception number 3, the following is added at the end of the sentence:

"unless undergoing a change of occupancy classification."

(4) Section [~~606.2.2~~]606.2.1 is deleted and replaced with the following:

[~~602.2.2~~]606.2.1 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with the reduced International Building Code level seismic forces as specified in IEBC Section [~~506.1.1.3~~]101.5.4.2 and design procedures of Section [~~506.1.1.1~~]101.5.4. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.

EXCEPTIONS:

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.[

~~(5) Section 705.3.1.2 is deleted and replaced with the following:~~

~~705.3.1.2 Fire escapes required. When more than one exit is required, an existing fire escape complying with Section 705.3.1.2.1 shall be accepted as providing one of the required means of egress.~~

~~705.3.1.2.1 Fire escape access and details. Fire escapes shall comply with all of the following requirements:~~

~~1. Occupants shall have unobstructed access to the fire escapes without having to pass through a room subject to locking.~~

~~2. Access to an existing fire escape shall be through a door, except that windows shall be permitted to provide access from single dwelling units or sleeping units in Group R-1, R-2, and I-1 occupancies or to provide access from spaces having a maximum occupant load of 10 in other occupancy classifications.~~

~~3. Existing fire escapes shall be permitted only where exterior stairs cannot be utilized because of lot lines limiting the stair size or because of the sidewalks, alleys, or roads at grade level.~~

~~4. Openings within 10 feet (3048 mm) of fire escape stairs shall be protected by fire assemblies having minimum 3/4-hour fire-resistance ratings.~~

~~Exception: Opening protection shall not be required in buildings equipped throughout with an approved automatic sprinkler system.~~

~~5. In all buildings of Group E occupancy, up to and including the 12th grade, buildings of Group I occupancy, rooming houses, and childcare centers, ladders of any type are prohibited on fire escapes used as a required means of egress.~~

~~(6) Section 906.1 is deleted and replaced with the following:~~

~~906.1 General. Accessibility in portions of buildings undergoing a change of occupancy classification shall comply with Section 605 and 912.8.~~]

([~~7~~]5) Section 907.3.1 is deleted and replaced with the following:

907.3.1 Compliance with the International Building Code. When a building or portion thereof is subject to a change of occupancy such that a change in the nature of the occupancy results in a higher seismic occupancy based on Table 1604.5 of the International Building Code; or where such change of occupancy results in a reclassification of a building to a higher hazard category as shown in Table 912.4; or where a change of a Group M occupancy to a Group A, [~~ETM~~]E, F, M, R-1, R-2, or R-4 occupancy with two-thirds or more of the floors involved in Level 3 alteration work; or when such change of occupancy results in a design occupant load increase of 100% or more, the building shall conform to the seismic requirements of the International Building Code for the new seismic use group.

Exceptions 1-4 remain unchanged.

5. Where the design occupant load increase is less than 25 occupants and the occupancy category does not change.

([~~8~~]6) In Section 912.7.3 exception 2 is deleted.

([~~9~~]7) In Section 912.8 number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one unit, of the dwelling or sleeping units shall be Type A dwelling units.

[

~~**R156-56-901. Local Amendments to the IBC.**~~

~~The following are adopted as amendments to the IBC to be applicable to the following jurisdictions:~~

~~(1) City of Farmington:~~

~~(a) A new Section (F)903.2.14 is added as follows:~~

~~(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:~~

~~1. The structure is over two stories high, as defined by the building code;~~

~~2. The nearest point of structure is more than 150 feet from the public way;~~

~~3. The total floor area of all stories is over 5,000 square feet (exeluding from the calculation the area of the basement and/or garage); or~~

~~4. The structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).~~

~~Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief.~~

~~(b) A new Section 907.20 is added as follows:~~

~~907.20 Alarm Circuit Supervision. Alarm circuits in alarm systems provided for commercial uses (defined as other than one- and two-family dwellings and townhouses) shall have Class "A" type of supervision. Specifically, Type "B" or End-of-line resistor and horn supervised systems are not allowed.~~

~~(c) NFPA 13-02 is amended to add the following new sections:~~

~~6.8.6 FDC Security Locks Required. All Fire Department connections installed for fire sprinkler and standpipe systems shall have approved security locks.~~

~~6.10 Fire Pump Disconnect Signs. When installing a fire pump, red plastic laminate signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".~~

~~14.1.1.5 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.~~

~~15.1.2.5 Verification of Water Supply:~~

~~15.1.2.5.1 Fire Flow Tests. Fire flow tests for verification of water supply shall be conducted and witnessed for all applications other than residential unless directed otherwise by the Chief. For residential water supply, verification shall be determined by administrative procedure.~~

~~15.1.2.5.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable water supply.~~

~~17.8.4 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:~~

~~Commercial:~~

~~FLUSH-Witness Underground Supply Flush;~~

~~ROUGH Inspection-Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test;~~

~~FINAL Inspection-Head Installation and Escutcheons, Inspectors Test Location and Flow, Main Drain Flow, FDC Location and Escutheon, Alarm Function, Spare Parts, Labeling of Components and Signage, System Completeness, Water Supply Pressure Verification, Evaluation of Any Unusual Parameter.~~

~~(2) City of North Salt Lake~~

~~A new Section (F)903.2.14 is added as follows:~~

~~(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when the following condition is present:~~

~~1. The structure is over 6,200 square feet.~~

~~Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief.~~

~~(3) Park City Corporation and Park City Fire District:~~

~~(a) Section (F)903.2 is deleted and replaced with the following:~~

~~(F)903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the location described in this section.~~

~~All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.~~

~~All new construction having more than two (2) stories, except R-3 occupancy.~~

~~All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.~~

All new construction in the Historic Commercial Business zone district, regardless of occupancy.

All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

All existing building within the Historic District Commercial Business zone.

(b) In Table 1505.1, the following is added as footnotes d and e:

d. Wood roof covering assemblies are prohibited in R-3 occupancies in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors.

e. Wood roof covering assemblies shall have a Class A rating in occupancies other than R-3 in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors. The owner of the building shall enter into a written and recorded agreement that the Class A rating of the roof covering assembly will not be altered through any type of maintenance process.

TABLE 1505.1.1
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

TABLE 1505.1.2
PROHIBITION/ALLOWANCE OF WOOD ROOFING

Rating	R-3 Occupancy	All Other Occupancies
less than or equal to 11	wood roof covering assemblies per Table 1505.1 are allowed	wood roof covering assemblies per Table 1505.1 are allowed
greater than or equal to 12	wood roof covering is prohibited	wood roof covering assemblies with a Class A rating are allowed

(c) Appendix C is adopted.

(4) Sandy City

(a) Section (F)903.2.14 is added as follows:

(F)903.2.14 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the 2006 International Fire Code. Exempt locations as indicated in Section 903.3.1.1.1 are allowed.

Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R Division 3, Group U occupancies and buildings complying with the International Residential Code unless otherwise required by the International Fire Code.

(b) Appendix L is added to the IBC and adopted as follows:

Appendix L BUILDINGS AND STRUCTURES CONSTRUCTED IN AREAS DESIGNATED AS WILDLAND-URBAN INTERFACE AREAS

AL 101.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 International Wildland-Urban Interface Code, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.

(i) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows:

504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 International Wildland-Urban Interface Code.

(ii) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted.

R156-56-902. Local Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable to the following jurisdictions:

(1) All local amendments to the IBC under Section R156-56-901, the NEC under Section R156-56-906, the IPC under Section R156-56-903, the IMC under Section R156-56-904, the IFGC under Section R156-56-905 and the IECC under Section R156-56-907 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC for the local jurisdiction to which the local amendment has been made. All references to the ICC Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b).

(2) City of Farmington:

R325 Automatic Sprinkler Systems.

(a) Sections R325.1 and R325.2 are added as follows:

R325.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. the structure is over two stories high, as defined by the building code;

2. the nearest point of structure is more than 150 feet from the public way;

3. the total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. the structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

R325.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13-D.

(b) In Chapter 43, Referenced Standards, the following NFPA referenced standards are added as follows:

TABLE

ADD	
13D-02	Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes, as amended by these rules
13R-02	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height
101-03	Life Safety Code

(c) NFPA 13D-02 is amended to add the following new sections:

1.15 Reference to NFPA 13-D. All references to NFPA 13-D in the codes, ordinances, rules or regulations governing NFPA 13-D systems shall be read to refer to "modified NFPA 13-D" to reference the NFPA 13-D as amended by additional regulations adopted by Farmington City.

4.6 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:

Residential:

ROUGH Inspection-Verify Water Supply Piping Size and Materials, Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test.

FINAL Inspection-Inspectors Test Flow, System Completeness, Spare Parts, Labeling of Components and Signage, Alarm Function, Water Supply Pressure Verification.

5.2.2.3 Exposed Piping of Metal. Exposed Sprinkler Piping material in rooms of dwellings shall be of Metal.

EXCEPTIONS:

a. CPVC Piping is allowed in unfinished mechanical and storage rooms only when specifically listed for the application as installed.

b. CPVC Piping is allowed in finished, occupied rooms used for sports courts or similar uses only when the ceiling/floor framing above is constructed entirely of non-combustible materials, such as a concrete garage floor on metal decking.

5.2.2.4 Water Supply Piping Material. Water Supply Piping from where the water line enters the dwelling adjacent to and inside the foundation to the fire sprinkler contractor point-of-connection shall be metal, suitable for potable plumbing systems. See Section 7.1.4 for valve prohibition in such piping. Piping down stream from the point-of-connection used in the fire sprinkler system, including the riser, shall conform to NFPA 13-D standards.

5.4 Fire Pump Disconnect Signs. When installing a Fire Pump, Red Plastic Laminate Signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".

7.1.4 Valve Prohibition. NFPA 13-d, Section 7.1 is hereby modified such that NO VALVE is permitted from the City Water Meter to the Fire Sprinkler Riser Control.

7.6.1 Mandatory Exterior Alarm. Every dwelling that has a fire sprinkler system shall have an exterior alarm, installed in an approved location. The alarm shall be of the combination horn/strobe or electric bell/strobe type, approved for outdoor use.

8.1.05 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment, shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.

8.7 Verification of Water Supply:

8.7.1 Fire Flow Tests: Fire Flow Tests for verification of Water Supply shall be conducted and witnesses for all applications other than residential, unless directed otherwise by the Chief. For residential Water Supply, verification shall be determined by administrative procedure.

8.7.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable Water Supply.

(3) Morgan City Corp:

In Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a site plan is submitted to, and approved by the building official.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(4) Morgan County:

In Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is set back not less than required by the Morgan County Zoning Ordinance for such structures, but not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a Land Use Permit must be applied for, and approved, by the Morgan County Planning and Zoning Department.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(5) City of North Salt Lake:

Sections R325.1 and R325.2 are added as follows:

R325.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

1. The structure is over 6,200 square feet.

R325.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13-D.

(6) Park City Corporation:

Appendix P is adopted.

(7) Park City Corporation and Park City Fire District:

(a) Section R905.7 is deleted and replaced with the following:

R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.

Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

(b) Section R905.8 is deleted and replaced with the following:

R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

(c) Appendix K is adopted.

(8) Sandy City

A new Section R325 is added to the IRC as follows:

Section R325 IGNITION RESISTANT CONSTRUCTION

R325.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 IWUIC, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.

(i) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows:

504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 IWUIC.

(ii) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted.

R156-56-903. Local Amendments to the IPC.

The following are adopted as amendments to the IPC to be applicable to the following jurisdictions:

(1) Salt Lake City

Appendix C of the IPC as specified and amended in R156-56-803(62), (63) and (64).

(2) South Jordan

(a) Section 312.9.2 is deleted and replaced with the following:

312.9.2 Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, pressure vacuum breaker assemblies, reduced pressure detector fire protection backflow prevention assemblies, double check detector fire protection backflow prevention assemblies, hose connection backflow preventers, and spill-proof vacuum breakers shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5013, ASSE 5015, ASSE 5020, ASSE 5047, ASSE 5048, ASSE 5052, ASSE 5056, CSA B64.10 or CSA B64.10.1. Assemblies, other than the reduced pressure principle assembly, protecting lawn irrigation systems that fail the annual test shall be replaced with a reduced pressure principle assembly.

(b) Section 608.16.5 is deleted and replaced with the following:

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by a reduced pressure principle backflow preventer.

R156-56-904. Local Amendment to the IMC.

The following are adopted as amendments to the IMC to be applicable to the following jurisdictions:

R156-56-905. Local Amendment to the IFGC.

The following are adopted as amendments to the IFGC to be applicable to the following jurisdictions:

R156-56-906. Local Amendment to the NEC.

The following are adopted as amendments to the NEC to be applicable to the following jurisdictions:

R156-56-907. Local Amendment to the IECC.

The following are adopted as amendments to the IECC to be applicable to the following jurisdictions:]

R156-56-[~~920~~]802. Local Amendment to the IEBC.

The following are adopted as amendments to the IEBC to be applicable to the following jurisdictions:

None.

KEY: contractors, building codes, building inspections, licensing
Date of Enactment or Last Substantive Amendment: [~~August 24, 2009~~]2010
Notice of Continuation: March 29, 2007
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-56-1; 58-56-4(2); 58-56-6(2)(a)[; ~~58-56-18~~]; 58-56-19

Commerce, Occupational and Professional Licensing
R156-78
Vocational Rehabilitation Counselors Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33585
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Vocational Rehabilitation Counselors Licensing Board reviewed the rule and determined that changes need to be made to make technical changes, replace references to licensed vocational rehabilitation counselor with "LVRC", modify the listing of "related field" and update the Code of Professional Ethics for Rehabilitation Counselors to the 2010 edition.

SUMMARY OF THE RULE OR CHANGE: The term "licensed vocational rehabilitation counselor" has been replaced with "LVRC" throughout the rule. In Section R156-78-102, adds "LVRC" as an acronym for licensed vocational rehabilitation counselor. Subsection R156-78-102(4)(a) adds "educational psychology with rehabilitation counseling emphasis" and "special education with rehabilitation counseling emphasis" as related fields. This addition is necessary because people with these degrees completed coursework years ago at Utah schools that is equivalent to coursework in today's rehabilitation counseling degrees. To not include these degrees after 01/01/2011 as related fields prevents otherwise qualified vocational rehabilitation counselors from becoming licensed. "Educational psychology" and "special education with rehabilitation counseling emphasis" are removed in Subsection R156-78-102(3)(b) because they are separately listed in Subsection R156-78-102(3)(a). The remaining subsections are renumbered. In Section R156-78-502, updated the Code of Professional Ethics for Rehabilitation Counselors from the 2002 edition to the 2010 edition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-78-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- Updates Code of Professional Ethics for Rehabilitation Counselors, published by Commission on Rehabilitation Counselor Certification, 01/01/2010

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The proposed amendments have a low likelihood of any additional cost or saving impact on the Division beyond the amount identified above. The Division may approve a few more license applications after 01/01/2011 due to the inclusion of "educational psychology with rehabilitation counseling emphasis" and "special education with rehabilitation counseling emphasis" as related fields in Section R156-78-102.

♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed vocational rehabilitation counselors and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: The proposed amendments only apply to licensed vocational rehabilitation counselors and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed vocational rehabilitation counselors and applicants for licensure in that classification. Under the proposed amendments, applicants for the LVRC license after 01/01/2011 who have degrees in "educational psychology with rehabilitation counseling emphasis" or "special education with rehabilitation counseling emphasis" will meet the education requirement. As a result, a few more applicants may qualify for licensure and these applicants stand to benefit financially from the proposed amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed vocational rehabilitation counselors and applicants for licensure in that classification. Under the proposed amendments, applicants for the LVRC license after 01/01/2011 who have degrees in "educational psychology with rehabilitation counseling emphasis" or "special education with rehabilitation counseling emphasis" will meet the education requirement. As a result, a few more applicants may qualify for licensure and these

applicants stand to benefit financially from the proposed amendments. There is also no cost involved with obtaining the updated edition of the Code of Professional Ethics for Rehabilitation Counselors since the document is available on the Internet.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing expands the list of education in related fields that meets the requirements for licensure and makes other technical amendments. No fiscal impact to businesses is anticipated beyond those addressed in the rule summary.

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:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/01/2010 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-78. Vocational Rehabilitation Counselors Licensing Act Rule.
R156-78-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 78, as used in Title 58, Chapters 1 and 78 or in this rule:

(1) "Disability related work experience", as used in Subsection 58-78-302(1)(e), means the practice of providing vocational rehabilitation services as defined in Subsection 58-78-102(3).

(2) "In-service" means a continuing education course that meets the requirements in Subsection R156-78-304(4) and is hosted or sponsored by an employer and not by a professional association, society or organization related to the profession.

(3) "LVRC" means a licensed vocational rehabilitation counselor.

([~~3~~]4) "Related field", as used in Subsection 58-78-302(1)(d), includes any of the following:

(a)(i) psychology[~~,~~];
(ii) clinical psychology[~~,~~];
(iii) counseling psychology[~~,~~];
(iv) professional guidance and counseling[~~,~~];
(v) social work[~~,~~];
(vi) [~~and~~]educational counseling;[~~ and~~]
(vii) educational psychology with rehabilitation counseling emphasis; and
(viii) special education with rehabilitation counseling emphasis; and

(b) before January 1, 2011, [~~educational psychology, ~~] rehabilitation studies[~~, special education with rehabilitation counseling emphasis~~] and marriage and family therapy.

([~~4~~]5) "Supervision", as used in Subsections 58-78-302(1)(e) and 58-78-304(1) means general supervision in that the supervising licensee:

(a) has authorized the work to be performed by the person being supervised;

(b) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio, or some other means, whether or not the supervising licensee is located on the same premises as the person being supervised;

(c) provides necessary consultation within a reasonable period of time; and

(d) maintains routine personal contact with the person being supervised.

([~~5~~]6) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 78, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-78-502.

([~~6~~]7) "Vocational assessment", as used in Subsection 58-78-102(3)(c), includes the performance of forensic evaluations.

R156-78-302b. Experience Requirement.

(1) An applicant for licensure verifying completion of the experience requirement established in Subsection 58-78-302(1)(e) with experience that was not completed under the supervision of an LVRC [~~licensed vocational rehabilitation counselor~~]must apply for licensure before January 1, 2011 for the applicant's experience to count toward completion of the experience requirement. Applicants for licensure who apply on or after January 1, 2011 must verify completion of experience under the supervision of an LVRC[~~ licensed vocational rehabilitation counselor~~].

(2) A maximum of 2,000 hours of supervised experience during any one year period may be credited toward the 4,000 hour supervised experience requirement.

R156-78-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-78-302(1)(f), the examination requirements for licensure as an LVRC [~~vocational rehabilitation counselor~~]include passing the Certified Rehabilitation Counselor Examination administered by the Commission on Rehabilitation Counselor Certification.

R156-78-304. Continuing Education.

(1) In accordance with Subsection 58-78-303(3), there is established a continuing education requirement for all individuals

licensed under Title 58, Chapter 78 as an LVRC[~~ vocational rehabilitation counselor~~].

(2) During the annual license renewal period commencing April 1 of each year, an LVRC [~~vocational rehabilitation counselor~~]shall be required to complete not less than 20 hours of continuing education directly related to the licensee's professional practice of which a minimum of two hours must be completed in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the one year period shall be decreased in a pro-rata amount equal to any part of that one year period preceding the date on which that individual first became licensed.

(4) Continuing education under this Section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education relevant to the practice of vocational rehabilitation counseling; and

(c) have a method of verification of attendance and completion.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, conferences or training sessions which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of:

(i) universities and colleges; or

(ii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of vocational rehabilitation counselors;

(b) a maximum of ten hours per one year period may be recognized for:

(i) teaching courses under Subsection (5)(a); or

(ii) supervision of an individual completing the experience requirement for licensure as an LVRC[~~ vocational rehabilitation counselor~~];

(c) a maximum of six hours per one year period may be recognized for clinical readings or in-service directly related to practice as an LVRC [~~vocational rehabilitation counselor~~]; and

(d) a maximum of 12 hours of continuing education per one year period may be recognized for internet or distance-learning courses that include an examination and issuance of a completion certificate.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in Section R156-1-308d.

R156-78-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) violating any provision of the Code of Professional Ethics for Rehabilitation Counselors, published by the Commission on Rehabilitation Counselor Certification, effective January 1, [~~2002~~]2010, which is hereby adopted and incorporated by reference;

(b) failing to report in writing to the Division unlawful or unprofessional conduct as defined in Section 58-78-501, 58-78-502 and this Section, by a person licensed under Title 58, Chapter 78 within ten days after learning of the conduct, if the conduct:

(i)(A) results in disciplinary action taken by the licensee's employer or a professional association; or

(B) results in a significant adverse impact on the public's health, safety or welfare; and

(ii) was not known by the licensee to have already been reported to the Division; and

(c) failing to provide general supervision as defined in Subsection R156-78-102(4).

KEY: licensing, vocational rehabilitation counselor
Date of Enactment or Last Substantive Amendment: [~~September 10, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 58-78-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Real Estate
R162-3
License Status Change

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33565
FILED: 04/22/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates the requirements for activating and reinstating a license to reflect legislative changes made to Subsection 61-2-9(2).

SUMMARY OF THE RULE OR CHANGE: The total number of continuing education hours required for activation is changed from 12 to 18. Nine of these hours must be completed in core courses. The total number of continuing education hours required for reinstatement of a license that has been expired for up to 6 months is changed from 12 to 18. A license that has been expired more than 6 months but less than a year may be reinstated by the applicant's paying certain fees and completing an additional 24 hours of continuing education.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget necessary for processing license activations and renewals is in place. No impact to the state budget is anticipated.
♦ LOCAL GOVERNMENTS: Local governments do not license with the division. Nor do they oversee licensing on a local level. These amendments will have no effect on local governments.
♦ SMALL BUSINESSES: Small businesses that choose to cover the costs of continuing education for a licensee's activation or reinstatement will have to pay for an additional six credit hours. These costs were considered by the Legislature in passing H.B. 86 (2009 General Session), which increased the total number of hours required. (DAR NOTE: H.B. 86 (2009) is found at Chapter 352, Laws of Utah 2009, and was effective 05/12/2009.)
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Affected persons completing continuing education in order to activate or reinstate a license will have to pay for an additional six credit hours. These costs were considered by the legislature in passing H.B. 86, which increased the total number of hours required.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons will complete and pay for an additional six hours of continuing education. The costs to comply will vary depending on which continuing education courses an individual chooses to complete. These costs were considered by the Legislature in passing H.B. 86 (2009 General Session).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing updates the rule to meet recent statutory amendments that increased the continuing education hours required for renewal and reinstatement of licenses. No fiscal impact to businesses is anticipated beyond that addressed when the statutory amendments were made.

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:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-3. License Status Change.
R162-3-1. Status Changes.

3.1. A licensee must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate non-refundable fees are received by the Division. Notice must be on the forms required by the Division.

3.1.1. Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

3.1.2. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

3.1.3. Change of name of a brokerage must be accompanied by evidence that the new name has been approved by the Division of Corporations, Department of Commerce.

3.1.4. Change of Principal Broker of a real estate brokerage which is a sole proprietorship, requires closure of the registered entity. The new principal broker shall activate the Registered Company and provide proof from the Division of Corporations of the authorization to use the DBA. Change cards will be required for the terminating Principal Broker, new Principal Broker and all licensees affiliated with the brokerage.

3.1.5. Change of a Principal Broker within an entity which is not a sole proprietorship requires written notice from the entity signed by both the terminating Principal Broker and the new Principal Broker.

R162-3-2. Unavailability of Licensee.

3.2. If a licensee is not available to properly execute the form required for a status change, the status change may still be made provided a letter advising of the change is mailed by certified mail to the last known address of the unavailable licensee. A verified copy of the letter and proof of mailing by certified mail must be attached to the form when it is submitted to the Division.

R162-3-3. Transfers.

3.3. Prior to transferring from one principal broker to another principal broker, the licensee must mail or deliver to the Division written notice of the change on the form required by the Division.

R162-3-4. Inactivation.

3.4. To voluntarily inactivate a license, the licensee must deliver or mail to the Division a written request for the change signed by both the licensee and principal broker.

3.4.1. Prior to placing a principal broker license on an inactive status, a principal broker must provide written notice to each licensee affiliated with the principal broker of that licensing status change. Evidence of that written notice must be provided to the Division in order to process the status change. The inactivation of the license of a principal broker will also cause the licenses of all affiliated licensees to be immediately inactivated if they do not

transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2. The non-renewal, suspension, or revocation of the license of a principal broker will cause the licenses of [~~all~~] affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2.1. When a principal broker is notified that the principal broker's license will be suspended or revoked, the principal broker must, prior to the effective date of the suspension or revocation, provide written notice to each licensee affiliated with the principal broker of that status change. In addition, the Division shall send written notice to each sales agent, associate broker, or branch broker of the effective date of inactivation and the process for transfer.

3.4.3. The principal broker may involuntarily inactivate the license of the sales agent or associate broker by complying with R162-3.2.

R162-3-5. Activation.

3.5. [~~All licensees~~]Licensees changing to active status must submit to the Division the applicable non-refundable activation fee, a request for activation in the form required by the Division, and, if the license was on inactive status at the time of last license renewal, proof of completion of the examination within six months prior to applying to activate or proof of completion of the [~~12~~]18 hours of continuing education that the licensee would have been required to complete in order to renew on active status. If a licensee last renewed on inactive status and applies to activate the license at the time of license renewal, the licensee shall be required to complete the [~~12~~]18 hours of continuing education required to renew but shall not be required to complete additional continuing education in order to activate the license.

3.5.1 Continuing Education for Activation. The [~~12~~]18 hours of continuing education required to activate a license shall be made up of at least [~~6~~]9 hours of "core" courses in subjects specified in Subsection R162-9.2.1. The balance of the [~~12~~]18 hours of continuing education may be "elective" courses in the subjects listed in Subsection R162-9.2.2.

3.5.1.1 To qualify as continuing education for activation, all courses submitted must have been completed within one year before activation.

3.5.1.2 Continuing education that was submitted to activate a license may not be used again toward the continuing education required on the licensee's next renewal.

R162-3-6. Renewal and Reinstatement.

3.6.1 Licenses are valid for a period of two years. A license may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current license. Licenses not properly renewed shall expire on the expiration date.

3.6.1.1 Reinstatement

(a) A license may be reinstated within thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

[~~3.6.1.2~~](b) A license may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal, paying a non-refundable reinstatement fee and submitting proof of having completed 12 hours of continuing education in addition to the [~~12~~]18 hours of continuing education required to renew a license on active status.

(c) A license may be reinstated after the six-month period described in Subsection (b) and until one year after expiration by complying with all requirements for a timely renewal, paying a non-refundable reinstatement fee, and submitting proof of having completed 24 hours of continuing education in addition to the 18 hours of continuing education required to renew a license on active status.

[~~3.6.1.3~~](d) A license that has been expired for more than [~~six months~~]one year may not be reinstated and an applicant must apply for a new license following the same procedure as an original license.

3.6.2 Renewal Requirements.

3.6.2.1 Continuing Education. [~~To renew a license on active status before January 1, 2010, an applicant must submit to the division proof of having completed, during the previous license period and by the 15th day of the month of expiration, 12 non-duplicative hours of continuing education from courses certified by the division.~~]To renew a license on active status[~~ after January 1, 2010~~], an applicant must submit to the division proof of having completed, during the previous license period and by the 15th day of the month of expiration, 18 non-duplicative hours of continuing education from courses certified by the division.

[~~3.6.2.1.1~~](a) During the first license period, a licensee must take the 12-hour "New Sales Agent Course" certified by the division. [~~Licensees in their first license period who renew their licenses before January 1, 2010 will satisfy their continuing education requirement ("core" and "elective") by taking the 12-hour "New Sales Agent Course." ~~]Licensees in their first license period [~~who renew their licenses after January 1, 2010 ~~]will need to complete 6 additional non-duplicative hours of continuing education (either "core" or "elective") as defined in R162.9.2.1 - 9.2.10.

[~~3.6.2.1.2~~](b) [~~During subsequent license periods before January 1, 2010 a licensee must take at least 6 hours of non-duplicative continuing education from courses certified by the division as "core" as defined in Rule R162.9.2.1. A licensee must take any remaining hours of continuing education from courses certified by the division as "elective" as defined in Rules R162.9.2.2 - 9.2.2.10. ~~]During subsequent license periods[~~ after January 1, 2010~~], a licensee must take at least 9 hours of non-duplicative continuing education from courses certified by the division as "core" as defined in R162.9.2.1. A licensee must take any remaining hours of continuing education from courses certified by the division as "elective" as defined in R162.9.2.2 - 9.2.2.10.

[~~3.6.2.1.2.1~~](c) The division may grant continuing education credit for non-certified courses submitted by a renewal applicant in the form required by the division, if the course was not required by these rules to be certified and the division determines that the course meets the continuing education objectives listed in Rule R162.9.2.

[~~3.6.2.1.3~~](d) Licensees must retain original course completion certificates for three years following renewal and produce those certificates when audited by the division.

3.6.2.2 Principal Broker. To renew a principal broker license on active status an applicant must certify that the business name under which the licensee is operating is current and in good

standing with the Division of Corporations and that all real estate trust accounts are current and in compliance with Rule R162-4.2.

3.6.2.3 Any misrepresentation in an application for renewal [~~will be considered~~]is a separate violation of these rules and separate grounds for disciplinary action against the licensee.

KEY: real estate business
Date of Enactment or Last Substantive Amendment: [~~December 8, 2009~~]2010
Notice of Continuation: April 18, 2007
Authorizing, and Implemented or Interpreted Law: 61-2-5.5

Commerce, Securities
R164-6-1g
Dishonest or Unethical Business Practices

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33580
FILED: 04/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposal updates statutory references, makes clarifying amendments, and adds several practices the Division deems to be dishonest or unethical which may form the basis of a disciplinary action filed under Section 61-1-6 of the Utah Uniform Securities Act.

SUMMARY OF THE RULE OR CHANGE: The proposal updates statutory references in light of 2009 amendments to the Utah Uniform Securities Act, and clarifies that dishonest or unethical practices identified in the rule for investment advisers also apply to investment adviser representatives. In addition, the rule adds several dishonest or unethical practices: 1) the sharing of commissions by a broker-dealer with an unlicensed agent; 2) for an investment adviser representative to compensate a customer for losses in the customer's account without the prior written authorization of the customer and the representative's employing investment adviser; 3) for an investment adviser to fail to comply with a reasonable request from the Division for information or testimony; and 4) the use of designations or certifications which mislead any person.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24 and Section 61-1-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No additional costs or savings to the state budget are anticipated, because the proposal simply makes clarifying amendments and adds several practices that may form the basis for certain administrative actions.
♦ LOCAL GOVERNMENTS: No additional costs or savings to local government are anticipated, because the proposal simply makes clarifying amendments and adds several practices that may form the basis for certain administrative actions.
♦ SMALL BUSINESSES: No additional costs or savings to small businesses are anticipated, because the proposal simply makes clarifying amendments and adds several practices that may form the basis for certain administrative actions.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No additional costs or savings to such persons are anticipated, because the proposal simply makes clarifying amendments and adds several practices that may form the basis for certain administrative actions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs for affected persons because the proposal simply identifies dishonest or unethical practices that may form the basis for certain administrative actions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposal should have no fiscal impact to businesses, because it does not add any new requirements, but rather better defines dishonest or unethical conduct for which a licensee may be sanctioned in an administrative action.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
♦ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
♦ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.
R164-6. Denial, Suspension or Revocation of a License.
R164-6-1g. Dishonest or Unethical Business Practices.
(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-6 and 61-1-24.

(2) This rule identifies certain acts and practices which the Division deems to constitute dishonest or unethical practices in the securities business under[~~violative of~~] Subsection 61-1-6(2)(a)(ii)(G)[~~1)(g)~~]. The list contained herein should not be considered to be all-inclusive of such acts and practices[~~which violate that subsection~~], but rather is intended to act as a guide to broker-dealers, agents, investment advisers, [~~and~~]federal covered advisers and investment adviser representatives as to the types of conduct which may result in sanctions under Subsection 61-1-6(2)(a)(ii)(G)[~~are prohibited~~].

(3) Conduct which violates Section 61-1-1 may also be considered to constitute dishonest or unethical practices under[~~violate~~] Subsection 61-1-6(2)(a)(ii)(G)[~~1)(g)~~].

(4) This rule is patterned after well-established standards in the industry which have been adopted by the SEC, FINRA[~~the NASD~~], NASAA, the national securities exchanges and various courts. It represents one of the purposes of the securities laws: to create viable securities markets in which those persons involved are held to a high standard of fairness with respect to their dealings with the public.

(5) The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent or deceptive, or to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(6) The federal statutory and regulatory provisions referenced in Paragraph (E) shall apply to investment advisers, [~~and~~]federal covered advisers, and investment adviser representatives regardless of whether the federal provision limits its application to advisers subject to federal registration.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Market maker" means a broker-dealer who, with respect to a particular security:

[~~(2)~~](a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

[~~(2)~~](b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

[~~(2)~~](c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "FINRA[~~NASD~~]" means the Financial Industry Regulatory Authority, formerly known as NASD[~~National Association of Securities Dealers~~].

(5) "NASDAQ" means National Association of Securities Dealers Automated Quotation System.

(6) "OTC" means over-the-counter.

(7) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealers

In relation to Broker-Dealers, as used in Subsection 61-1-6(2)(a)(ii)(G)[~~1)(g)~~] "dishonest or unethical practices" shall include:

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or both;[~~.~~]

(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;[~~.~~]

(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;[~~.~~]

(4) executing a transaction on behalf of a customer without prior authorization to do so;[~~.~~]

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;[~~.~~]

(6) executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;[~~.~~]

(7) failing to segregate a customer's free securities or securities held in safekeeping;[~~.~~]

(8) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules and regulations of the SEC;[~~.~~]

(9) entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;[~~.~~]

(10) failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;[~~.~~]

(11) charging fees for services without prior notification to a customer as to the nature and amount of the fees;[~~.~~]

(12) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;[~~.~~]

(13) offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell;[~~.~~]

(14) representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;[~~.~~]

(15) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or

fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

[~~(15)~~](a) effecting any transaction in a security which involves no change in the beneficial ownership thereof;

[~~(15)~~](b) entering an order or orders for the purchase or sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

[~~(15)~~](c) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in a security or raising or depressing the price of a security, for the purpose of inducing the purchase or sale of the security by others;[~~.~~]

(16) guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;[~~.~~]

(17) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which:

[~~(17)~~](a) purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or

[~~(17)~~](b) purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;[~~.~~]

(18) using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of the prohibited practice would be distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;[~~.~~]

(19) failing to disclose to a customer that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;[~~.~~]

(20) failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;[~~.~~]

(21) failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;[~~.~~]

(22) permitting a person to open an account for another person or transact business in the account unless there is on file written authorization for the action from the person in whose name the account is carried;[~~.~~]

(23) permitting a person to open or transact business in a fictitious account;[~~.~~]

(24) permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefor;[~~.~~]

(25) in connection with the solicitation of a sale or purchase of an OTC, non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer;[~~.~~]

(26) marking any order tickets or confirmations as "unsolicited" when in fact the transaction is solicited;[~~.~~]

(27) for any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain; provided that, this subsection shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued;[~~.~~]

(28) failing to comply with any applicable provision of the Conduct Rules of FINRA[~~the NASD~~] or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization to which the broker-dealer is subject and which is approved by the SEC;[~~.~~]

(29) any acts or practices enumerated in Section R164-1-3;[~~.~~]

(30) failing to comply with a reasonable request from the Division for information or testimony, or an examination request made pursuant to Subsection 61-1-5(5), or a subpoena of the Division;[~~.~~]

(31) dividing or otherwise splitting commissions, profits or other compensation from the purchase or sale of securities with any person not licensed as an agent of the broker-dealer, or of a broker-dealer under direct or indirect common control; or

(32) in connection with the offer, sale, or purchase of any security, using a specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing clients or prospective clients, in such a way as to mislead any person. The prohibited use of such certification or professional designation includes, but is not limited to, the following:

(a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) use of a nonexistent or self-conferred certification or designation;

(c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have; or

(d) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) is primarily engaged in the business of instruction in sales and/or marketing;

(ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(D) Agents[-]

In relation to agents of broker-dealers or agents of issuers, as used in Subsection 61-1-6(2)(a)(ii)(G)[~~1)(g)~~] "dishonest or unethical practices" shall include:

(1) engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;[-]

(2) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, in the case of agents of broker-dealers, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;[-]

(3) establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;[-]

(4) sharing directly or indirectly in profits or losses in the account of any customer without the prior written authorization of the customer and the broker-dealer which the agent represents;[-]

(5) dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;[-]

(6) for agents who are dually licensed under Rule R164-4-1(D)(4)(b), failing to disclose the dual license to a client; or[-]

(7) engaging in conduct specified in subsections (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(9), (C)(10), (C)(15), (C)(16), (C)(17), (C)(18), (C)(24), (C)(25), (C)(26), (C)(28), (C)(29), [~~or~~] (C)(30) or (C)(32)[~~ of Rule R164-6-1g~~].

(E) Investment Advisers, Investment Adviser Representatives and Federal Covered Advisers

In relation to investment advisers or investment adviser representatives, as used in Subsection 61-1-6(2)(a)(ii)(G)[~~1)(g)~~] "dishonest or unethical practices" shall include the following listed practices. In relation to federal covered advisers, as used in Subsection 61-1-6(2)(a)(ii)(G)[~~1)(g)~~], "dishonest or unethical practices" shall include the following, but only if such conduct involves fraud or deceit:

(1) [~~R~~]recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;[-]

(2) [~~E~~]exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;[-]

(3) [~~I~~]inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if [~~that~~]an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer account[-]";

(4) [~~P~~]placing an order to purchase or sell a security for the account of a client without authority to do so;[-]

(5) [~~P~~]placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;[-]

(6) [~~B~~]borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;[-]

(7) [~~L~~]loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;[-]

(8) [~~To~~]misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or [~~to~~]misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or [~~to~~]omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;[-]

(9) [~~P~~]providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact[-] except that [~~(T~~]this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service;[~~,~~)]

(10) [~~C~~]charging a client an unreasonable advisory fee;[-]

(11) [~~F~~]failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

[~~(11)~~](a) entering into [~~C~~]compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

[~~(11)~~](b) [~~C~~]charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;[-]

(12) [~~G~~]guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;[-]

(13) [~~P~~]publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;[-]

(14) [~~D~~]disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;[-]

(15) [~~T~~]taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is

subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940;[-]

(16) [E]entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;[-]

(17) [F]failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940;[-]

(18) [E]entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or investment adviser representative would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940;[-]

(19) [To]including[dicate], in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940;[-]

(20) [E]engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940 notwithstanding the fact that such investment adviser or investment adviser representative is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940;[-]

(21) [E]engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or regulation thereunder;[-]

(22) for an investment adviser representative compensating any customer for losses in the account of the customer without the prior written authorization of the customer and the representative's investment adviser;

(23) failing to comply with a reasonable request from the Division for information or testimony, or an examination request made pursuant to Subsection 61-1-5(5), or a subpoena of the Division; or

(24) in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or when issuing or promulgating analyses or reports relating to securities, using a specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing clients or prospective clients, in such a way as to mislead any person. The prohibited use of such certification or professional designation includes, but is not limited to, the following:

(a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) use of a nonexistent or self-conferred certification or designation;

(c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have; or

(d) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) is primarily engaged in the business of instruction in sales and/or marketing;

(ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

KEY: securities regulation, dishonest or unethical practices, business practices, designations
Date of Enactment or Last Substantive Amendment: [~~March 4, 1998~~]2010
Notice of Continuation: July 30, 2007
Authorizing, and Implemented or Interpreted Law: 61-1-6(2)(a)(ii)(G)[~~1)(g)~~]; 61-1-24

Environmental Quality, Administration
R305-5
Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33589
FILED: 04/29/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with H.B. 20 of the 2010 Utah Legislative Session which amended Section 19-1-206. (DAR NOTE: H.B. 20 (2010) is found at Chapter 229, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: These amendments to Rule R305-5 are required to implement changes to Section 19-1-206 enacted through H.B. 20 of the 2010 Utah Legislative Session. To the extent provided by statute, contractors and subcontractors entering into a state contract must provide health insurance coverage for their employees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-206

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Because this revision does not create new requirements not already required by statute, no cost or savings is expected for state budget.
♦ LOCAL GOVERNMENTS: Because this revision does not create new requirements not already required by statute, no cost or savings is expected for local governments.
♦ SMALL BUSINESSES: Because this revision does not create new requirements not already required by statute, no cost or savings is expected for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this revision does not create new requirements not already required by statute, no cost or savings is expected for persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this revision does not create new requirements not already required by statute, no cost or savings is expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to the rule do not add requirements in addition to those created by statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
ADMINISTRATION
168 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Amanda Smith, Executive Director

R305. Environmental Quality, Administration.
R305-5. Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation.
R305-5-1. Purpose.

The purpose of this rule is to comply with the provisions of UCA Section 19-1-206.

R305-5-2. Authority.

This rule is established under UCA Section19-1-206(6) which authorizes the Department of Environmental Quality to make rules governing health insurance in certain design and construction contracts.

R305-5-3. Definitions.

(1) "Employee" means an "employee," "worker," or "operative" as defined in UCA Section 34A-2-104 who works in the State at least 30 hours per calendar week, and meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(2) "Health benefit plan" has the same meaning as provided in UCA Section 31A-1-301.

(3) "Qualified health insurance coverage" means[~~a health benefit plan that~~] at the time the contract is entered into or renewed: [

~~(a) provides coverage that is actuarially equivalent to the current benefit plan determined by the Children's Health Insurance Program under Section 26-40-106, and under which the employer pays at least 50% of the premium for the employee and the dependents of the employee;~~

~~(b) is a federally qualified high deductible health plan that has the lowest deductible permitted for a federally qualified high deductible health plan and an out of pocket maximum that does not exceed three times the amount of the annual deductible, and under which the employer pays 75% of the premium for the employee and the dependents of the employee; or~~

~~(c) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under R305-5-3(3)(a), and under which the employer pays at least 75% of the premium of the employee and the dependents of the employee.~~]

(a) a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan (posted at http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf) determined by the Children's Health Insurance Program under UCA Section 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the state, in which:

(i) the employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the state; and

(ii) for purposes of calculating actuarial equivalency under this Subsection (3)(a):

(A) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels the deductible is $750 per individual and $2,250 per family; and the out-of-pocket maximum is $3,000 per individual and $9,000 per family;

(B) dental coverage is not required; and

(C) other than UCA Section 26-40-106(2)(a), the provisions of UCA Section 26-40-106 do not apply; or

(b)(i) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either the lowest deductible permitted for a federally qualified high deductible health plan; or a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(ii) an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and

(iii) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the state.

(4) "Subcontractor" has the same meaning provided for in UCA Section 63A-5-208.

R305-5-4. Applicability of Rule.

(1)(a) Except as provided in Subsection R305-5-4(2) below, this Rule R305-5 applies to a design or construction contract[~~all contracts~~] entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, and to a prime contractor or subcontractor in accordance with Subsection (1)(b)[~~if:~~

~~(a) the contract is for design and construction; and~~]

(b)(i) A prime contractor is subject to this section if[-] the prime contract is in the amount of $1,500,000 or greater.[~~; or~~]

(ii) A subcontractor is subject to this section if a subcontract is in the amount of $750,000 or greater.

(2) This Rule R305-5 does not apply to contracts entered into by the department or a division or board of the department if:

(a) the application of this Rule R305-5 jeopardizes the receipt of federal funds;

(b) the contract or agreement is between the department or a division or board of the department and another agency of the state, the federal government, another state, an interstate agency, a political subdivision of this state, or a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is a sole source contract or an emergency procurement.

(3) This Rule R305-5 does not apply to a change order as defined in UCA Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by R305-5-4(1).

R305-5-5. Compliance Requirement.

A contractor or subcontractor that is subject to the requirements of R305-5 shall have and will maintain an offer of qualified health insurance coverage for the contractor's or subcontractor's employees and dependents during the duration of the contract.

R305-5-6. Demonstration of Compliance.

(1) A contractor or subcontractor subject to this rule R305-5 shall demonstrate compliance with R305-5-5 by submitting to the department a written certification of compliance initially no later than the time of the execution of the contract by the contractor and thereafter on an annual basis unless the department requests a biannual certification.

(2) The written certification of compliance shall include information demonstrating that qualified health insurance coverage as defined in R305-5-3(3) is being offered. The actuarially equivalent determination in R305-5-3(3) is met by the contractor or subcontractor if the contractor or subcontractor provides the department with a written statement of actuarial equivalency from either the Utah Insurance Department,[~~ or~~] an actuary selected by the contractor or subcontractor or their insurer, or an underwriter who is responsible for developing the employer group's premium rates.

R305-5-7. Effect of Failure to Comply.

The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by R305-5-5 may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under UCA Section 63G-6-801 or any other provision in UCA 63G, Chapter 6, Part 8, Legal and Contractual Remedies, and may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R305-5-8. Penalties, Sanctions, and Liabilities.

(1) Pursuant to UCA Section 19-1-206(4)(b), a person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection R305-5-5 and R305-5-6 is guilty of an infraction.

(2) Pursuant to UCA Section 19-1-303 and UCA Section 19-1-206(6), a contractor or subcontractor who fails to comply with R305-5-5 and R305-5-6 is subject to an administrative civil penalty of up to $5000 per day, except that monetary penalties may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(3) If a contractor or subcontractor intentionally violates the provisions of R305-5-5, the contractor or subcontractor is subject to:

(a) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(b) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract; and

(c) an action for debarment of the contractor or subcontractor in accordance with UCA Section 63G-6-804 upon the third or subsequent violation.

(4)(a) In addition to the penalties imposed under R305-5-8 and the referenced statutes and rules, a contractor or subcontractor who intentionally violates the provisions of UCA Section 19-1-206 and R305-5, pursuant to UCA Section 19-1-206(7), shall be liable to the employee for health care costs [~~not covered by insurance~~]that would have been covered by qualified health insurance coverage.

(b) An employer has an affirmative defense to a cause of action under Subsection 4(a) if:

(i) the employer relied in good faith on a written statement of actuarial equivalency provided by an actuary, or underwriter who is responsible for developing the employer group's premium rates; or

(ii) the department determines that compliance is not required under the provisions of R305-5-4(2) or (3).

KEY: contract requirements, health insurance
Date of Enactment or Last Substantive Amendment: [~~February 16, 2010~~]2010
Authorizing, and Implemented or Interpreted Law: 19-1-206

Governor, Criminal and Juvenile Justice (State Commission on)
R356-101
Judicial Nominating Commissions

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33586
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a new rulemaking responsibility for the Commission on Criminal and Juvenile Justice (CCJJ) pursuant to H.B. 289 (2010 General Session) which takes effect on 07/01/2010. That bill transfers responsibility for staffing judicial nominating commissions from the Judiciary to the Governor's Office. Because of the change in the staffing, the rules must now be promulgated by CCJJ rather than by the judiciary. (DAR NOTE: H.B. 289 (2010) is found at Chapter 134, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: The new rule provides procedures for judicial nominating commissions which will be staffed by the Governor's Office beginning 07/01/2010. These procedures are almost identical to the standards currently being used by the Judiciary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 78A-10-103(1)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Because the procedures are currently in place and will remain the same, there will be no impact to the state budget. Pursuant to legislative appropriations, funds to cover the staffing of the judicial nominating commissions will be transferred from the judiciary to the Commission on Criminal and Juvenile Justice. Thus, the rules will be revenue neutral.

♦ LOCAL GOVERNMENTS: All expenses for the staffing of the judicial nominating commissions are borne by the state (through the Commission on Criminal and Juvenile Justice). Local governments do not participate in the judicial nominating commission process.

♦ SMALL BUSINESSES: All expenses for the staffing of the judicial nominating commissions are borne by the state (through the Commission on Criminal and Juvenile Justice). Small business owners are sometimes appointed to serve on a judicial nominating commission. However, their direct costs (travel and per diem) are paid by the Commission on Criminal and Juvenile Justice.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: All expenses for the staffing of the judicial nominating commissions are borne by the state (through CCJJ). No other business or entity is required to expend any funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The affected persons are: 1) those who serve on the judicial nominating commissions, and 2) those who are applying to be a judge. The procedures outlined in this rule do not change any compliance costs for either category of affected persons. Responsibility for the procedures is simply moving from the judiciary to the CCJJ.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: All expenses for the staffing of the judicial nominating commissions are borne by the state (through CCJJ). The procedures are the same as they have been in the past. The change is that responsibility for the procedures is simply moving from the judiciary to CCJJ. Because the procedures will be the same and because the procedures require nothing from businesses, there will be no fiscal impact on businesses.

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

GOVERNOR
CRIMINAL AND JUVENILE JUSTICE (STATE COMMISSION ON)
SUITE 330 SENATE BUILDING
STATE CAPITOL COMPLEX
420 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ronald Gordon by phone at 801-538-1432, by FAX at 801-538-1024, or by Internet E-mail at rbgordon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2010

AUTHORIZED BY: Ronald Gordon, Executive Director

R356. Governor, Criminal and Juvenile Justice (State Commission on).

R356-101. Judicial Nominating Commissions.

R356-101-1. Definitions.

As used in R356-101:

(1) "Application period" means the period of time during which applications for a judicial vacancy may be submitted and begins with the posting of a notice of vacancy and ends with the closing period for submitting applications as identified in the notice of vacancy. The application period is part of the recruitment period.

(2) "CCJJ" means the staff of the Commission on Criminal and Juvenile Justice.

(3) "Commission" means the judicial nominating commission having authority over the judicial vacancy.

(4) "Commission staff" means the individuals assigned by the governor to provide staff support to the commission pursuant to Utah Code Annotated Section 78A-10-203(2) or 78A-10-303(2).

(5) "Notice of vacancy" means the announcement of a current or pending judicial vacancy by CCJJ to the public as provided in R356-101-3.

(6) "Organizational meeting" means the first meeting of a commission after the close of the recruitment period.

(7) "Recruitment period" means the period of time beginning with the posting of a notice of vacancy and ending with the completion of all tasks necessary to convene the commission. The recruitment period includes the application period.

R356-101-2. Recruitment Period.

(1) CCJJ shall begin the recruitment period for a judicial vacancy 235 days before the effective date of the judicial vacancy unless sufficient notice is not given, in which case CCJJ shall begin the recruitment period within 10 days of receipt of notice of the judicial vacancy by the governor.

(2) The application period for a judicial vacancy shall be a minimum of 30 days.

(3) The recruitment period for a judicial vacancy shall be a minimum of 30 days but not more than 90 days unless fewer than nine applications are received for a judicial vacancy in which case the recruitment period may be extended up to an additional 30 days.

R356-101-3. Notice of Vacancy.

(1) As part of the recruitment period, CCJJ shall post a notice of vacancy on its website and shall provide a notice of vacancy to:

(a) the Utah State Bar to be distributed to its members;

(b) members of the media;

(c) the Administrative Office of the Courts;

(d) the president of the Utah Senate; and

(e) other offices and associations as CCJJ determines appropriate.

(2) The notice of vacancy shall include:

(a) the jurisdiction of the court in which the vacancy occurs;

(b) the constitutional minimum requirements for judicial office;

(c) a brief description of the work of the court;

(d) the method for obtaining application forms;

(e) the application deadline; and

(f) the method for submitting oral or written comments at a meeting of the commission.

R356-101-4. Applications.

(1) Applications for a judicial vacancy shall include:

(a) an application form established by CCJJ which shall require applicants to provide:

(i) education history;

(ii) work history;

(iii) evidence of constitutional qualifications;

(iv) information regarding litigation as a party;

(v) attorney and judicial references as provided in R395-101-5; and

(vi) other information relevant to fitness to serve as a judge as determined by CCJJ;

(b) a waiver of the right to review the records in the nomination and appointment processes;

(c) a waiver of confidentiality of records which are the subject of investigation by the commission;

(d) an authorization for CCJJ to obtain consumer reports about the applicant; and

(e) a one paragraph summary of professional qualifications that will be made available to the public if the applicant's name is released for public comment prior to nomination.

(2) Applicants shall submit:

(a) an original and eight copies of the complete application;

(b) an original and eight copies of the applicant's resume; and

(c) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.

(3) If the applicant has applied for another judicial position within the prior year, the applicant may satisfy the application requirements by submitting:

(a) a letter to CCJJ expressing interest in applying for the judicial vacancy and in using the previously submitted application; and

(b) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.

(4) CCJJ shall establish application forms and make the forms available electronically and in hard copies.

(5) Applications are considered timely submitted if CCJJ receives all application materials prior to the application deadline. Applications mailed, but not received by CCJJ, prior to the application deadline are not considered timely submitted. Partial applications are not considered timely submitted.

(6) Following receipt of applications, CCJJ shall conduct investigations in the following areas for each applicant:

(a) criminal background;

(b) disciplinary actions taken by the Utah State Bar;

(c) disciplinary actions taken by the Judicial Conduct Commission; and
(d) consumer credit.

R356-101-5. References.
(1) Applicants who are engaged in an adversarial practice shall submit the following types of references as specified in the application:
(a) lawyers adverse to the applicant in litigation or negotiations;
(b) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;
(c) judges assigned to cases in which the applicant acted as a lawyer; and
(d) judges who know the applicant.
(2) Applicants who are engaged in a non-adversarial practice and who are not judges shall submit the following types of references as specified in the application:
(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years; and
(b) judges who know the applicant.
(3) Applicants who are judges shall submit the following types of references as specified in the application:
(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;
(b) judges who know the applicant; and
(c) lawyers who represented parties in cases over which the applicant presided as judge.
(4) CCJJ shall select which references will be contacted and requested to complete a standard reference form established by CCJJ.

R356-101-6. Pre-Screening of Applications.
(1) CCJJ shall review the applications upon the passing of the application deadline and remove all applications submitted by applicants who do not meet the constitutional qualifications.
(2) CCJJ shall provide to all members of the commission a list of all applicants identified as not meeting the constitutional qualifications.

R356-101-7. Meetings of the Commission.
(1) The commission shall convene an organizational meeting within 10 days of the end of the recruitment period.
(2) During the organizational meeting the commission shall:
(a) allow public comment concerning:
(i) the nominating process;
(ii) qualifications for judicial office;
(iii) issues facing the judiciary; and
(iv) other issues as determined appropriate by the commission; and
(b) following public comment, close the meeting to the public to:
(i) establish a timeframe for certifying a list of nominees to the governor;
(ii) discuss applicants; and
(iii) discuss conflicts of interest as provided in R356-101-9.
(3) The Commission may meet as necessary to certify the list of nominees to the governor, but shall certify the list of nominees no later than 45 days after convening the organizational meeting.
(4) The chair of the commission presides at all meetings and ensures that each commissioner has the opportunity to be a full participant in the commission process.
(5) The member of the Judicial Council appointed by the chief justice of the Utah Supreme Court pursuant to Utah Code Annotated Section 78A-10-202(6) or 78A-10-302(8) shall be a full participant in discussions of the commission, but may not vote.
(6) The commission staff shall:
(a) ensure that the commission follows the rules promulgated by CCJJ;
(b) resolve any questions regarding the rules promulgated by CCJJ;
(c) take summary minutes of commission meetings which shall include:
(i) the date, time and place of the meeting;
(ii) a list of the commission members present and a list of those absent or excused;
(iii) a list of commission staff present;
(iv) a general description of the decisions made;
(v) any declarations by commission members of a relationship, interest or bias concerning any applicant;
(vi) a record of the total tally of all votes, but not the vote of individual commission members;
(vii) written statements submitted to the commission; and
(viii) any other matter desired by the commission to be included; and
(d) perform other tasks assigned by the commission that are consistent with governing statutes and rules.
(7)(a) The commission shall determine which applicants will be invited to interview.
(b) Each commission member shall have the opportunity to question applicants during interviews and to discuss the qualifications of applicants.
(c) In questioning applicants and discussing the qualifications of applicants, the chair shall speak last and the member of the Judicial Council appointed by the chief justice of the Utah Supreme Court shall speak next to last.
(8)(a) If a commission member refuses to follow governing statutes or rules, the commission member is disqualified from the commission and the governor shall appoint a replacement.
(b) The commission staff determines whether a commission member refuses to follow governing statutes or rules.
(9)(a) Following all applicant interviews, commission members shall determine by confidential ballot which applicants will be certified to the governor as nominees.
(b) The Appellate Court Nominating Commission shall certify a list of seven names to the governor.
(c) Trial Court Nominating Commissions shall certify a list of five names to the governor.
(10)(a) Prior to certifying the list of nominees to the governor, the commission shall allow public comment on the nominees for a minimum of 10 days.
(b) Following the public comment, the commission may remove an applicant from the list of nominees if:

(i) the commission receives new information about an applicant that demonstrates the applicant is unfit to serve as a judge;

(ii) provides to the applicant being considered for removal from the list of nominees a copy of any written comments received during the public comment period about that applicant;

(iii) allows the applicant being considered for removal from the list the opportunity to respond to the information received during the public comment period; and

(iv) not less than one fewer than the total number of commission members at the meeting vote in favor of removing the applicant from the list of nominees.

(d) If the commission removes an applicant from the list of nominees the commission shall select another nominee from among the interviewed applicants and again allow public comment on the nominees for a minimum of 10 days.

R356-101-8. Certifying the List of Nominees.

(1) After the commission has determined which applicants to include in the list of nominees, it shall deliver the list of nominees to the governor, the president of the Senate and the Office of Legislative Research and General Counsel by letter from the chair of the commission.

(2) Commission staff shall deliver to the governor a copy of the complete application and all related documents for each nominee.

(3)(a) If a nominee withdraws before the governor has made an appointment, the commission may, at the request of the governor, nominate a replacement if it can do so before the expiration of the commission's original 45-day deadline.

(b) Unless time permits, the commission does not need to publish the name of the replacement nominee for public comment.

R356-101-9. Conflicts of Interest.

(1) Commission members shall disclose during the organizational meeting the existence and nature of a relationship with an applicant that may impact the commission member's ability to fairly and impartially evaluate the applicant or any other applicant.

(2)(a) A commission member who believes they have a relationship with an applicant that will impact their ability to fairly and impartially evaluate an applicant shall recuse themself from the nominating process.

(b) If a commission member discloses a relationship with an applicant and does not recuse themself from the nominating process, the commission may, by majority vote, disqualify the commission member from participation if the commission believes the relationship will impact the commission member's ability to fairly and impartially evaluate an applicant.

(c) A commission member who has recused themself or been disqualified by the commission may rejoin the nominating process if:

(i) the applicant with whom the commission member has a relationship is no longer being considered by the commission; and

(ii) the commission decides, by majority vote, to allow the commission member to participate.

(3) A commission member who is related to an applicant within the third degree shall be disqualified from the nominating process.

R356-101-10. Evaluation Criteria.

In addition to criteria established by the Utah Constitution and the Utah Code Annotated, commission members shall during the nomination process consider the applicants':

(1) integrity;

(2) legal knowledge and ability;

(3) professional experience;

(4) judicial temperament;

(5) work ethic;

(6) financial responsibility;

(7) public service;

(8) ability to perform the work of a judge; and

(9) impartiality.

R356-101-11. Confidentiality.

(1) All applications and related documents for a judicial vacancy, names of applicants and all discussions during commission meetings are confidential.

(2)(a) Except as provided in R356-101-8(2) and in this Subsection (2) or as otherwise required by law, commission members and commission staff shall not disclose the details of applications or the details of commission discussions to any person other than commission members or commission staff.

(b) Commission members may disclose the names of applicants only as necessary to make inquiries regarding the qualifications of applicants.

(3)(a) Commission members shall return all applications and related documents to commission staff at the conclusion of the nomination process.

(b) Notes taken by a commission member are not returned to commission staff.

(c) Commission staff shall retain one copy of the application materials in accordance with an approved retention schedule and shall destroy other copies of the application materials.

(4) Commission staff shall destroy all ballots used during the nomination process.

R356-101-12. Notice that a Judge is Removed or Intends to Resign or Retire.

The Administrative Office of the Courts shall immediately notify the governor and CCJJ if it learns that a state judge:

(1) has submitted formal notice of intent to retire;

(2) has submitted formal notice of intent to resign;

(3) has been removed from office: or

(4) has otherwise vacated the judicial office.

KEY: judicial nominating commissions, judges
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 78A-10-103(1)

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-3A-9
Reimbursement for Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33600
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to specify that reimbursement for outpatient hospital services is in accordance with rates as updated in the Utah Medicaid State Plan.

SUMMARY OF THE RULE OR CHANGE: This amendment specifies that reimbursement for outpatient hospital services is in accordance with the Utah Medicaid State Plan.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department anticipates that this change will not increase annual total expenditures because the reimbursement methodology that is used in the current State Plan is also applied in this rule.
♦ LOCAL GOVERNMENTS: The Department anticipates that this change will not increase annual total expenditures to local governments because the reimbursement methodology that is used in the current State Plan is also applied in this rule.
♦ SMALL BUSINESSES: The Department anticipates that this change will not increase annual total expenditures for outpatient hospital owners because the reimbursement methodology that is used in the current State Plan is also applied in this rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department anticipates that this change will not increase annual total expenditures for outpatient hospital owners because the reimbursement methodology that is used in the current State Plan is also applied in this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department anticipates that this change will not increase annual total expenditures for a single Medicaid provider because the reimbursement methodology that is used in the current State Plan is also applied in this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The approved state plan with the federal government specifies the reimbursement methodology for outpatient services. This repeal of unnecessary detail in rule avoids the potential of conflict in the rules and the state plan.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-3A. Outpatient Hospital Services.
R414-3A-9. Reimbursement for Services.

~~[(1) Except for emergency room, lithotripsy, laboratory and radiology services, the payment level for outpatient hospital claims is based on 69% of allowed charges for urban hospitals and 83% of allowed charges for rural hospitals.~~

~~(2) Payments for emergency room services vary depending on urban and rural designation and whether the service is designed as "emergency" or "non-emergency." The "emergency" designation is based on the principal diagnosis according to ICD-9 Code. Rural hospitals receive 88% of charges for emergency services and 58% for non-emergency use of the emergency room. Urban hospitals receive 88% of charges for emergencies and 36% of charges for non-emergency use of the emergency room.~~

~~(3) Payment for laboratory, radiology, physical therapy, and occupational therapy services provided in an outpatient hospital is based on HCPCS codes and an established fee schedule, unless a lesser amount is billed. The fee schedule used to pay physicians is used to establish payment rates.~~

~~(4) Billed charges shall not exceed the usual and customary charge to private pay patients.~~

~~(5) Payments for all outpatient services are limited to the aggregate annual amount Medicare would pay for the same services as required by 42 CFR 447.321.~~

~~(6) Percent of charges reimbursement will be based on provider charges in effect March 1, 2010.~~]Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: 2010
Notice of Continuation: November 8, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3(2); 26-18-4

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-14A
Hospice Care

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33579
FILED: 04/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify Medicaid's hospice care policy for the continuous home care day service.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that extended stay residents of nursing facilities are not eligible for the continuous home care day service. It also makes other minor corrections.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because this change only clarifies that the hospice program does not permit residents of nursing facilities to receive the continuous home care day service.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide hospice care for Medicaid clients.
♦ SMALL BUSINESSES: There is no impact to providers of hospice care because this change only clarifies that the hospice program does not permit residents of nursing facilities to receive the continuous home care day service.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to providers of hospice care or to the Medicaid clients who receive hospice services because this change only clarifies that the hospice program does not permit residents of nursing facilities to receive the continuous home care day service.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single hospice care provider or to a Medicaid client because this change only clarifies that the hospice program does not permit residents of nursing facilities to receive the continuous home care day service.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Home Care Day Service is a benefit available to Medicaid clients in a community setting. This service is not authorized in a long term care facility. This rule change emphasizes long standing policy and no impact on business is expected.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-14A. Hospice Care.
R414-14A-1. Introduction and Authority.

This rule is authorized by Sections 26-1-5 and 26-18-3. It implements Medicaid hospice care services as found in 42 U.S.C. 1396d(o).

R414-14A-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition:

(1) "Attending physician" means a physician who:

(a) is a doctor of medicine or osteopathy; and

(b) is identified by the client at the time he or she elects to receive hospice care as having the most significant role in the determination and delivery of the client's medical care.

(2) "Cap period" means the 12 month period ending October 31 used in the application of the cap on reimbursement for inpatient hospice care as described in Subsection R414-14A-22(5).

(3) "Employee" means an employee of the hospice provider or, if the hospice provider is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. "Employee" includes a volunteer under the direction of the hospice provider.

(4) "Hospice care" means care provided to terminally ill clients by a hospice provider.

(5) "Hospice provider" means a provider that is licensed under the provisions of Rule R432-750 and is primarily engaged in providing care to terminally ill individuals.

(6) "Physician" means a doctor of medicine or osteopathy who is licensed by the state of Utah.

(7) "Representative" means an individual who has been authorized under state law to make health care decisions, including initiating, continuing, refusing, or terminating medical treatments for a client who is mentally unable to make health care decisions.

(8) "Terminally ill" means the client has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

R414-14A-3. Client Eligibility Requirements.

(1) A client who is terminally ill may obtain hospice care pursuant to this rule.

(2) A client's certification of a terminal condition required for hospice eligibility must be based on a face-to-face assessment by a physician conducted no more than 90 days prior to the date of enrollment.

(3) A client dually enrolled in Medicare and Medicaid must elect the hospice benefit for both Medicare and Medicaid. The client must receive hospice coverage under Medicare. Election for the Medicaid hospice benefit provides the client coverage for Medicare co-insurance and coverage for room and board expenses while a resident of a Medicare-certified nursing facility, Intermediate Care Facility for the Mentally Retarded (ICF/MR), or freestanding hospice facility.

R414-14A-4. Program Access Requirements.

(1) Hospice care may be provided only by a hospice provider licensed by the Department, that is Medicare certified in accordance with 42 CFR Part 418, and that is a Medicaid provider.

(2) A hospice provider must have a valid Medicaid provider agreement in place prior to initiating hospice care for Medicaid clients. The Medicaid provider agreement is effective on the date a Medicaid provider application is received in the Department and shall not be made retroactive to an earlier date, including an earlier effective date of Medicare hospice certification.

(3) At the time of a change of ownership, the previous owner's provider agreement terminates as of the effective date of the change of ownership.

(4) The Department accepts all waivers granted to hospice agencies by the Centers for Medicare and Medicaid Services as part of the Medicare certification process.

(5) Hospice agencies participating in the Medicaid program shall provide hospice care in accordance with the requirements of 42 CFR Part 418.

R414-14A-5. Service Coverage.

Hospice care categories eligible for Medicaid reimbursement are the following:

(1) "Routine home care day" is a day in which a client who has elected to receive hospice care is at home and is not receiving continuous home care as defined in Subsection R414-14A-5(5). For purposes of routine home care day, extended stay residents of nursing facilities are considered at home.

(2) "Continuous home care day" is a day in which a client who has elected to receive hospice care receives a minimum of eight aggregate hours of care from the hospice provider during a 24-hour day, which begins and ends at midnight. The eight aggregate hours of care must be predominately nursing care provided by either a registered nurse or licensed practical nurse. Continuous home care is only furnished during brief periods of crisis in which a patient requires continuous care that is primarily nursing care to achieve palliation or management of acute medical symptoms. [~~For purposes of routine home care day, extended stay residents of nursing facilities are considered at home~~]Extended stay residents of nursing facilities are not eligible for continuous home care day.

(3) "Inpatient respite care day" is a day in which the client who has elected hospice care receives short-term inpatient care when necessary to relieve family members or other persons caring for the client at home.

(4) "General inpatient care day" is a day in which a client who has elected hospice care receives general inpatient care for pain control or acute or chronic symptom management that cannot be managed in a home or other outpatient setting. General inpatient care may be provided in a hospice inpatient unit, a hospital, or a nursing facility.

(5) "Room and Board" is medication administration, performance of personal care, social activities, routine and therapeutic dietary services, meal service including direct feeding assistance, maintaining the cleanliness of the client's room, assistance with activities of daily living, durable equipment, prescribed therapies, and all other services unrelated to care associated with the terminal illness that would be covered under the Medicaid State Plan nursing facility benefit.

R414-14A-6. Hospice Election.

(1) A client who meets the eligibility requirement for Medicaid hospice must file an election statement with a particular hospice. If the client is physically or mentally incapacitated, his or her legally authorized representative may file the election statement.

(2) Each hospice provider designs and prints its own election statement. The election statement must include the following:

(a) identification of the particular hospice that will provide care to the client;

(b) the client's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the client's terminal illness;

(c) acknowledgment that the client waives certain Medicaid services as set forth in Section R414-14A-11;

(d) acknowledgment that the client or representative may revoke the election of the hospice benefit at any time in the future and therefore become eligible for Medicaid services waived at the time of hospice election as set forth in Section R414-14A-8; and

(e) the signature of the recipient or representative.

(3) The effective date of the election may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement

(4) An election to receive hospice care remains effective through the initial election period and through the subsequent election periods without a break in care as long as the client:

(a) remains in the care of a hospice;

(b) does not revoke the election; and

(c) is not discharged from the hospice.

(5) The hospice provider must notify the Department at the time a Medicaid client selects the hospice benefit, including selecting the hospice provider under a change of designated hospice. The notification must include a copy of the hospice election statement and the client's plan of care for hospice care. Authorization for reimbursement of hospice care begins no earlier than the date notification is received by the Department for an eligible Medicaid client, except as provided in Section R414-14A-19.

(6) Subject to the conditions set forth in this rule, a client may elect to receive hospice care during one or more of the following election periods:

(a) an initial 90-day period;

(b) a subsequent 90-day period; or

(c) an unlimited number of subsequent 60-day periods.

R414-14A-7. Change in Hospice Provider.

(1) A client or representative may change, once in each election period, the designation of the particular hospice from which hospice care will be received.

(2) The change of the designated hospice is not a revocation of the election for the period in which it is made.

(3) To change the designation of hospice provider, the client must file, with the hospice provider from which care has been received and with the newly designated hospice provider, a statement that includes the following information:

(a) the name of the hospice provider from which the client has received care;

(b) the name of the hospice provider from which the client plans to receive care; and

(c) the date the change is to be effective.

(4) The client must file the change on or before the effective date.

R414-14A-8. Revocation and Re-election of Hospice Services.

(1) A client or legal representative may voluntarily revoke the client's election of hospice care at any time during an election period.

(2) To revoke the election of hospice care, the client or representative must file a statement with the hospice provider that includes the following information:

(a) a signed statement that the client or representative revokes the client's election for Medicaid coverage of hospice care.

(b) the date that the revocation is to be effective, which may not be earlier than the date that the revocation is made; and

(c) an acknowledgment signed by the patient or the patient's representative that the patient will forfeit Medicaid hospice coverage for any remaining days in that election period.

(3) Upon revocation of the election of Medicaid coverage of hospice care for a particular election period, a client:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage for the benefits waived under Section R414-14A-6; and

(c) may at any time elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.

(4) If an election has been revoked, the client, or his or her representative if the client is mentally incapacitated, may at any time file an election, in accordance with this rule, for any other election period that is still available to the client.

(5) Hospice providers shall not encourage clients to temporarily revoke hospice services solely for the purpose of avoiding financial responsibility for Medicaid services that have been waived at the time of hospice election as described in Section R414-14A-9.

(6) Hospice providers must send notification to the Department within ten calendar days that a client has revoked hospice benefits. Notification must include a copy of the revocation statement signed by the client or the client's legal representative.

R414-14A-9. Rights Waived to Some Medicaid.

(1) For the duration of an election for hospice care, a client waives all rights to Medicaid to the following services:

(a) hospice care provided by a hospice other than the hospice designated by the client, unless provided under arrangements made by the designated hospice; and

(b) any Medicaid services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or are duplicative of hospice care except for services:

(i) provided by the designated hospice;

(ii) provided by another hospice under arrangements made by the designated hospice; and

(iii) provided by the client's attending physician if the services provided are not otherwise covered by the payment made for hospice care.

(2) Medicaid services for illnesses or conditions not related to the client's terminal illness are not covered through the hospice program but are covered when provided by the appropriate provider.

R414-14A-10. Notice of Hospice Care in a Nursing Facility, ICF/MR, or Freestanding Inpatient Hospice Facility.

(1) The hospice provider must notify the Department at the time a Medicaid client residing in a Medicare certified nursing facility, a Medicaid certified ICF/MR, or a Medicare freestanding inpatient hospice facility elects the Medicaid hospice benefit or at the time a Medicaid client who has elected the Medicaid hospice benefit is admitted to a Medicare certified nursing facility, a Medicaid certified ICF/MR, or a Medicare freestanding inpatient hospice facility.

(2) The notification must include a prognosis of the time the client will require skilled nursing facility services under the hospice benefit.

(3) Except as provided in Section R414-14A-20, reimbursement for room and board begins no earlier than the date the hospice provider notifies the Department that the client has elected the Medicaid hospice benefit.

R414-14A-11. Notice of Independent Attending Physician.

The hospice provider must notify the Department at the time a Medicaid client designates an attending physician who is not a hospice employee.

R414-14A-12. Extended Hospice Care.

(1) Clients who accumulate 12 or more months of hospice benefits are subject to an independent utilization review by a physician with expertise in end-of-life and hospice care selected by the Department.

(2) If Medicare determines that a patient is no longer eligible for Medicare reimbursement for hospice services, the patient will no longer be eligible for Medicaid reimbursement for hospice services. Providers must immediately notify Medicaid upon learning of Medicare's determination. Medicaid reimbursement for hospice services will cease the day after Medicare notifies the hospice provider that the client is no longer eligible for hospice care.

R414-14A-13. Provider Initiated Discharge from Hospice Care.

(1) The hospice provider may not initiate discharge of a patient from hospice care except in the following circumstances:

(a) the patient moves out of the hospice provider's geographic service area or transfers to another hospice provider by choice;

(b) the hospice determines that the patient is no longer terminally ill; or

(c) the hospice provider determines, under a policy set by the hospice for the purpose of addressing discharge for cause, that the patient's behavior (or the behavior of other persons in the patient's home) is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability [~~fo~~]of the hospice to operate effectively is seriously impaired.

(2) The hospice provider must carry out the following activities before it seeks to discharge a patient for cause:

(a) advise the patient that a discharge for cause is being considered;

(b) make a diligent effort to resolve the problem that the patient's behavior or situation presents;

(c) ascertain that the discharge is not due to the patient's use of necessary hospice services; and

(d) document the problem and efforts to resolve the problem in the patient's medical record.

(3) Before discharging a patient for any reason listed in Subsection R414-14A-13(1), the hospice provider must obtain a physician's written discharge order from the hospice provider's medical director. If a patient also has an attending physician, the hospice provider must consult the physician before discharge and the attending physician must include the review and decision in the discharge documentation.

(4) A client, upon discharge from the hospice during a particular election period, for reasons other than immediate transfer to another hospice:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage of the benefits waived during the hospice coverage period; and

(c) may at any time elect to receive hospice care if the client is again eligible to receive the benefit in the future.

(5) The hospice provider must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change if that patient cannot continue to be certified as terminally ill. The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because the patient is no longer terminally ill.

R414-14A-14. Hospice Room and Board Service.

If a client residing in a nursing facility, ICF/MR or a freestanding hospice inpatient unit elects hospice care, the hospice provider and the facility must have a written agreement under which the total care of the individual must be specified in a comprehensive service plan, the hospice provider is responsible for the professional management of the client's hospice care, and the facility agrees to provide room and board and services unrelated to the care of the terminal condition to the client. The agreement must include:

(1) identification of the services to be provided by each party and the method of care coordination to assure that all services are consistent with the hospice approach to care and are organized to achieve the outcomes defined by the hospice plan of care;

(2) a stipulation that Medicaid services may be provided only with the express authorization of the hospice;

(3) the manner in which the contracted services are coordinated, supervised and evaluated by the hospice provider;

(4) the delineation of the roles of the hospice provider and the facility in the admission process; needs assessment process, and the interdisciplinary team care conference and service planning process;

(5) requirements for documenting that services are furnished in accordance with the agreement;

(6) the qualifications of the personnel providing the services; and

(7) the billing and reimbursement process by which the nursing facility will bill the hospice provider for room and board and receive payment from the hospice provider.

(8) In cases in which nursing facility residents revoke their hospice benefits, it is the responsibility of the hospice provider to notify the nursing facility of the revocation. The notice must be in writing and the hospice provider must provide it to the nursing facility on or before the revocation date.

R414-14A-15. In Home Physician Services.

In-home physician visits by the attending physician are authorized for hospice clients if the attending physician determines that direct management of the client in the home setting is necessary to achieve the goals associated with a hospice approach to care.

R414-14A-16. Continuous Home Care.

When the hospice provider determines that a patient requires at least eight hours of primarily nursing care in order to manage an acute medical crisis, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary and were in compliance with an established plan of care in order to meet a particular crisis situation. Continuous home care is a covered benefit only as necessary to maintain the terminally ill client at home.

R414-14A-17. General Inpatient Care.

(1) General inpatient care is authorized without prior authorization for an initial ten calendar day length of stay. Prior authorization is required for any additional general inpatient care days during the same stay to verify that the client's needs meet the

requirements for general inpatient care. If a hospice provider requests additional days, the subsequent requests are subject to clinical review and approval by qualified Department staff.

(2) General inpatient care days may not be used due to the breakdown of the primary care giving living arrangements or the collapse of other sources of support for the recipient.

(3) Prior authorization for additional days beyond the initial ten calendar day stay must be obtained before the hospice care is provided, except as allowed in Section R414-14A-19.

R414-14A-18. Inpatient Respite Care.

When the hospice provider determines that a patient requires a short-term inpatient respite stay in order to relieve the family members or other persons caring for the client at home, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary to relieve a particular caregiver situation. Inpatient respite care may not be reimbursed for more than five consecutive days at a time. Inpatient respite care may not be reimbursed for a patient residing in a nursing facility, ICF/MR, or freestanding hospice inpatient unit.

R414-14A-19. Notification and Prior Authorization Grace Periods.

If a new patient is already Medicaid eligible upon admission to hospice care, the hospice provider must submit a prior authorization request form to the Department in order to receive reimbursement for hospice services it renders, except in the following circumstances:

(a) during weekend, holidays, and after regular Department business hours, a hospice provider may begin service to a new Medicaid hospice enrollee, including covering room and board, or initiate a different hospice care requiring prior authorization for a grace period up to ten calendar days before notifying the Department;

(b) before the end of the ten calendar day grace period, the hospice provider must complete and submit the prior authorization request form to the Department in order to receive reimbursement for hospice services it renders.

(c) if the hospice provider does not submit the prior authorization request form timely, the Department will not reimburse the provider for the care that it renders before the date that the form is received.

R414-14A-20. Post-Payment for Services Provided While in Medicaid-Pending Status.

(1) If a new client is not Medicaid eligible upon admission to hospice services but becomes Medicaid eligible at a later date, the Department will reimburse a hospice provider retroactively for up to 90 days to allow the hospice eligibility date to coincide with the client's Medicaid eligibility date if:

(a) the Department determines that the client met Medicaid eligibility requirements at the time the service was provided;

(b) the hospice care met the prior authorization criteria at the time of delivery; and

(c) the hospice provider reimburses the Department for care related to the client's terminal illness delivered by other Medicaid providers during the retroactive period.

(2) The hospice provider must provide a copy of the initial care plan and any other documentation to the Department adequate to demonstrate the hospice care met prior authorization criteria at the time of delivery.

R414-14A-21. Hospice Care Reimbursement.

(1) Medicaid payment for covered hospice care is made in accordance with the methodology set forth in the Utah Medicaid State Plan.

(2) A hospice provider may not charge a Medicaid client for services for which the client is entitled to have payment made under Medicaid.

(3) Medicaid reimbursement to a hospice provider for services provided during a cap period is limited to the cap amount specified in Subsection R414-14A-22(5).

(4) Medicaid does not apply the aggregate caps used by Medicare.

(5) Payment for hospice care is made on the basis of the geographic location where the service is provided as described in the Medicaid State Plan.

(6) Routine home care, continuous home care, general inpatient care, inpatient respite care services, and hospice room and board, are reimbursable to the hospice provider only.

(7) Hospice general inpatient care and inpatient respite care are not reimbursed by Medicaid for services provided in a Veterans Administration hospital or military hospital.

R414-14A-22. Payment for Hospice Care Categories.

(1) The Department establishes payment amounts for the following categories:

(a) Routine home care.

(b) Continuous home care.

(c) Inpatient respite care.

(d) General inpatient care.

(e) Room and Board service.

(2) The Department reimburses the hospice provider at the appropriate payment amount for each day for which an eligible Medicaid recipient is under the hospice's care.

(3) The Medicaid reimbursement covers the same services and amounts covered by the equivalent Medicare reimbursement rate for comparable service categories.

(4) The Department makes payment according to the following procedures:

(a) Payment is made to the hospice for each day during which the client is eligible and under the care of the hospice, regardless of the amount of services furnished on any given day.

(b) Payment is made for only one of the categories of hospice care described in Subsection R414-14A-22(1) for any particular day.

(c) On any day in which the client is not an inpatient, the Department pays the hospice provider the routine home care rate, unless the client receives continuous home care as provided in Subsection R414-14A-5(5) for a period of at least eight hours. In that case, the Department pays a portion of the continuous care day rate in accordance with Subsection R414-14A-22(5).

(d) The hospice payment on a continuous care day varies depending on the number of hours of continuous services provided. The number of hours of continuous care provided during a continuous home care day is multiplied by the hourly rate to yield

the continuous home care payment for that day. A minimum of eight hours of licensed nursing care must be furnished on a particular day to qualify for the continuous home care rate.

(e) Subject to the limitations described in Subsection R414-14A-22(5), on any day on which the client is an inpatient in an approved facility for inpatient care, the appropriate inpatient rate (general or respite) is paid depending on the category of care furnished. The inpatient rate (general or respite) is paid for the date of admission and all subsequent inpatient days, except the day on which the client is discharged. For the day of discharge, the appropriate home care rate is paid unless the client dies as an inpatient. In the case where the client dies as an inpatient, the inpatient rate (general or respite) is paid for the discharge day. Payment for inpatient respite care is subject to the requirement that it may not be provided consecutively for more than five days at a time.

(5) Payment for inpatient care is limited as follows:

(a) The total payment to the hospice for inpatient care (general or respite) is subject to a limitation that total inpatient care days for Medicaid clients not exceed 20 percent of the total days for which these clients had elected hospice care. Clients afflicted with AIDS are excluded when calculating inpatient days.

(b) At the end of a cap period, the Department calculates a limitation on payment for inpatient care for each hospice to ensure that Medicaid payment is not made for days of inpatient care in excess of 20 percent of the total number of days of hospice care furnished to Medicaid clients by the hospice.

(c) If the number of days of inpatient care furnished to Medicaid clients is equal to or less than 20 percent of the total days of hospice care to Medicaid clients, no adjustment is necessary.

(d) If the number of days of inpatient care furnished to Medicaid clients exceeds 20 percent of the total days of hospice care to Medicaid clients, the total payment for inpatient care is determined in accordance with the procedures specified in Subsection R414-14A-22(5)(e). That amount is compared to actual payments for inpatient care, and any excess reimbursement must be refunded by the hospice.

(e) If a hospice exceeds the number of inpatient care days described in Subsection R414-14A-22(5)(d), the total payment for inpatient care is determined as follows:

(i) Calculate the ratio of the maximum number of allowable inpatient days to the actual number of inpatient care days furnished by the hospice to Medicaid clients.

(ii) Multiply this ratio by the total reimbursement for inpatient care made by the Department.

(iii) Multiply the number of actual inpatient days in excess of the limitation by the routine home care rate.

(iv) Sum the amounts calculated in Subsection R414-14A-22(5)(e)(ii) and (iii).

(6) The hospice provider may request an exception to the inpatient care payment limitation if the hospice provider demonstrates the volume of Medicaid enrollees during the cap period was insufficient to reasonably achieve the required 20% ratio.

R414-14A-23. Payment for Physician Services.

(1) The following services performed by hospice physicians are included in the rates described in Sections R414-14A-21 and 22:

(a) General supervisory services of the medical director.

(b) Participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.

(2) For services not described in Subsection R414-14A-23(1), direct care services related to the terminal illness or a related condition provided by hospice physicians are reimbursed according to the Medicaid reimbursement fee schedule for physician services. Services furnished voluntarily by physicians are not reimbursable.

(3) Services of the client's attending physician, including in-home services, are reimbursed according to the Medicaid fee schedule for State Plan physician services. Services furnished voluntarily by physicians are not reimbursable.

R414-14A-24. Hospice Payment Covers Special Modalities.

No additional Medicaid payment will be made for chemotherapy, radiation therapy, and other special modalities of care for palliative purposes regardless of the cost of the services.

R414-14A-25. Payment for Nursing Facility, ICF/MR, and Freestanding Inpatient Hospice Unit Room and Board.

(1) For clients in a nursing facility, ICF/MR, or a freestanding hospice inpatient unit who elect to receive hospice care from a Medicaid enrolled hospice provider, Medicaid will pay the hospice provider an additional per diem for routine home care [~~and continuous home care~~]services to cover the cost of room and board in the facility. For nursing facilities and ICFs/MR, the room and board rate is[**e**] 95 percent of the amount that the Department would have paid to the nursing facility or ICF/MR provider for that client if the client had not elected to receive hospice care. For freestanding hospice inpatient facilities, the room and board rate is 95 percent of the statewide average paid by Medicaid for nursing facility services.

(2) Reimbursement for room and board is made to the hospice provider. The hospice provider is responsible to reimburse the facility the room and board payment received. The reimbursement is payment in full for the services described in Subsection R414-14A-14(2). The facility cannot bill Medicaid separately.

(3) If a hospice enrollee in a nursing facility, ICF/MR, or a freestanding hospice inpatient unit has a monetary obligation to contribute to his or her cost of care in the facility, the facility must collect and retain the contribution. The hospice must reimburse the facility the reduced amount received from Medicaid directly or from a Medicaid Health Plan.

R414-14A-26. Limitation on Liability for Certain Hospice Coverage Denials.

If a client is determined not to be terminally ill while hospice care were received under this rule, the client is not responsible to reimburse the Department. If the Department denies reimbursement to the hospice provider, the hospice provider may not seek reimbursement from the client.

R414-14A-27. Medicaid Health Plans and Hospice.

(1) If a Medicaid-only client is enrolled in a Medicaid health plan, the hospice selected by the client must have a contract

with the health plan. The health plan is responsible to reimburse the hospice for hospice care. The Department will not directly reimburse a hospice provider for a Medicaid-only client covered by a health plan.

(2) If a Medicaid-only client enrolled in a health plan elects hospice care before being admitted to a nursing facility, ICF/MR, or a freestanding hospice inpatient unit, the health plan is responsible to reimburse the hospice provider for both the hospice care and the room and board until the client is disenrolled from the health plan by the Department. At the point the health plan determines that the enrollee will require care in the nursing facility for greater than 30 days, the health plan will notify the Department of the prognosis of extended nursing facility services. The Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities.

(3) If a hospice enrollee is covered by Medicare for hospice care, the Medicaid health plan is responsible for the health plan's payment rate less any amount paid by Medicare and other payors. The health plan is responsible for payment even if the Medicare covered service is rendered by an out-of-plan provider or was not authorized by the health plan.

(4) The health plan is responsible for room and board expenses of a hospice enrollee receiving Medicare hospice care while the client is a resident of a Medicare-certified nursing facility, ICF/MR, or freestanding hospice facility until the client is disenrolled from the health plan by the Department. On the 31st day, the client is disenrolled from the health plan and enrolled in the Medicaid fee-for-service hospice program. At the point the Department determines that the enrollee will require care in the nursing facility for greater than 30 days, the Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities. The room and board expenses will be set in accordance with Section R414-14A-25.

(5) The hospice provider is responsible for determining if an applicant for hospice care is covered by a Medicaid health plan prior to enrolling the client, for coordinating services and reimbursement with the health plan during the period the client is receiving the hospice benefit, and for notifying the health plan when the client disenrolls from the hospice benefit.

R414-14A-28. Marketing by [~~House~~]Hospice Providers.

Hospice providers shall not engage in unsolicited direct marketing to prospective clients. Marketing strategies shall remain limited to mass outreach and advertisements, except when a prospective client or legal representative explicitly requests information from a particular hospice provider. Hospice providers shall refrain from offering incentives or other enticements to persuade a prospective client to choose that provider for hospice care.

R414-14A-29. Medicaid 1915c HCBS Waivers and Hospice.

(1) For hospice enrollees covered by a Medicaid 1915c Home and Community-Based Services Waiver, hospice providers shall provide medically necessary care that is directly related to the patient's terminal illness.

(2) The waiver program may continue to provide services that are:

(a) unrelated to the client's terminal illness and;

(b) assessed by the waiver program as necessary to maintain safe residence in a home or community-based setting in accordance with waiver requirements.

(3) The waiver case management agency and the hospice case management agency shall meet together upon commencement of hospice services to develop a coordinated plan of care that clearly defines the roles and responsibilities of each program.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~January 28~~], 2010
Notice of Continuation: September 30, 2009
Authorizing, and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-33C
Targeted Case Management for the Homeless

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 33571
FILED: 04/22/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This repeal is necessary because targeted case management for the homeless as outlined in this rule is no longer available to Medicaid clients.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because no agencies or individuals have been enrolled to provide these services since 2003.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide case management services.
♦ SMALL BUSINESSES: There is no impact to small businesses because no agencies or individuals have been enrolled to provide these services since 2003.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid

clients because no agencies or individuals have been enrolled to provide these services since 2003.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid client because no agencies or individuals have been enrolled to provide these services since 2003.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This repeal will have no fiscal impact because the service has not been available since 2003.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

[~~R414-33C. Targeted Case Management for the Homeless.~~

~~R414-33C-1. Introduction and Authority.~~

~~(1) This rule outlines targeted case management services that are available to homeless Medicaid clients.~~

~~(2) This rule is authorized under UCA 26-18-3 and implements 42 USC 1396n(g), which authorizes targeted case management services.~~

~~R414-33C-2. Definitions.~~

~~In this rule, "CHEC" means Child Health Evaluation and Care and is Utah's version of the federally mandated Early Periodic Screening, Diagnosis and Treatment (EPSDT) program. All Medicaid clients from birth through age twenty who are in the Traditional Medicaid Plan are eligible for the CHEC program.~~

~~R414-33C-3. Client Eligibility Requirements.~~

~~Targeted case management services are available to homeless Medicaid clients enrolled in the Non-Traditional Medicaid Plan, pregnant women, and CHEC-eligible Medicaid recipients enrolled in the Traditional Medicaid Plan who:~~

~~(1) reside in Salt Lake, Summit, Wasatch, Weber, or Utah County emergency homeless shelters;~~

~~(2) do not otherwise have a permanent address, residence, or facility in which they could reside;~~

~~(3) do not live in a boarding home, residential treatment facility, or facility that houses only victims of domestic abuse; or~~

~~(4) have left the homeless shelter and require continued targeted case management to prevent a recurrence of homelessness.~~

~~R414-33C-4. Program Access Requirements.~~

~~(1) Targeted case management services may be provided only by an emergency homeless shelter in Salt Lake, Summit, Wasatch, Weber, or Utah County that is capable of providing temporary shelter for at least 30 days in order to assure that sufficient case management services are provided to successfully reintegrate the homeless individual into the community.~~

~~(2) A qualified targeted case manager case must complete a management needs assessment that documents that:~~

~~(a) the individual requires treatment or services from a variety of agencies and providers to meet the individual's medical, social, educational, and other needs; and~~

~~(b) there is reasonable indication that the individual will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the services.~~

~~R414-33C-5. Service Coverage.~~

~~(1) Medicaid covers:~~

~~(a) client assessment to determine service needs, including activities that focus on needs identification to determine the need for any medical, educational, social, or other services. Assessment activities include taking client history, identifying the needs of the client and completing related documentation, gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the client;~~

~~(b) development of a written, individualized, coordinated case management service plan based on information collected through an assessment that specifies the goals and actions to address the client's medical, social, educational and other service needs. This includes input from the client, the client's authorized health care decision maker, family, and other agencies knowledgeable about the client, to develop goals and identify a course of action to respond to the client's assessed needs;~~

~~(c) referral and related activities to help the client obtain needed services, including activities that help link the client with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the client;~~

~~(d) coordinating the delivery of services to the client, including CHEC screening and follow-up;~~

~~(e) client assistance to establish and maintain eligibility for entitlements other than Medicaid;~~

~~(f) monitoring and follow-up activities, including activities and contacts that are necessary to ensure the targeted case management service plan is effectively implemented and adequately addressing the needs of the client, which activities may be with the~~

client, family members, providers or other entities, and conducted as frequently as necessary to help determine whether services are furnished in accordance with the client's case management service plan, whether the services in the case management service plan are adequate, whether there are changes in the needs or status of the client, and if so, making necessary adjustments in the case management service plan and service arrangements with providers;

(g) contacting non-eligible or non-targeted individuals when the purpose of the contact is directly related to the management of the eligible individual's care. For example, family members may be able to help identify needs and supports, assist the client to obtain services, and provide case managers with useful feedback to alert them to changes in the client's status or needs;

(h) instructing the client or caretaker, as appropriate, in independently accessing needed services; and

(i) monitoring the client's progress and continued need for targeted case management and other services.

(2) The agency may bill Medicaid for the above activities only if:

(a) the activities are identified in the case management service plan and the time spent in the activity involves a face-to-face encounter, telephone or written communication with the client, family, caretaker, service provider, or other individual with a direct involvement in providing or assuring the client obtains the necessary services documented in the service plan; and

(b) there are no other third parties liable to pay for services, including reimbursement under a medical, social, educational, or other program.

(3) Covered case management service provided to a hospital or nursing facility patient is limited to a maximum of five hours per admission.

(4) Medicaid does not cover:

(a) documenting targeted case management services with the exception of time spent developing the written case management needs assessment, service plans, and 180-day service plan reviews;

(b) teaching, tutoring, training, instructing, or educating the client or others, except when the activity is specifically designed to assist the client, parent, or caretaker to independently obtain client services. For example, Medicaid does not cover client assistance in completing a homework assignment or instructing a client or family member on nutrition, budgeting, cooking, parenting skills, or other skills development;

(c) directly assisting with personal care or daily living activities that include bathing, hair or skin care, eating, shopping, laundry, home repairs, apartment hunting, moving residences, or acting as a protective payee;

(d) routine courier services. For example, running errands or picking up and delivering food stamps or entitlement checks;

(e) direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred. For example, providing medical and psychosocial evaluations, treatment, therapy and counseling, otherwise billable to Medicaid under other categories of service;

(f) direct delivery of foster care services that include research gathering and completion of documentation, assessing adoption placements, recruiting or interviewing potential foster care placements, serving legal papers, home investigations, providing transportation, administering foster care subsidies, or making foster care placement arrangements;

(g) traveling to the client's home or other location where a covered case management activity occurs, nor time spent transporting a client or a client's family member;

(h) services for or on behalf of a non-Medicaid eligible or a non-targeted individual if services relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care. For example, Medicaid does not cover counseling the client's sibling or helping the client's parent obtain a mental health service;

(i) activities for the proper and efficient administration of the Medicaid State Plan that include client assistance to establish and maintain Medicaid eligibility. For example, locating, completing and delivering documents to a Medicaid eligibility worker;

(j) recruitment activities in which the mental health center or case manager attempts to contact potential service recipients;

(k) time spent assisting the client to gather evidence for a Medicaid hearing or participating in a hearing as a witness; and

(l) time spent coordinating between case management team members for a client.

R414-33C-6. Qualified Providers.

Targeted case management services must be provided by an individual employed by or under contract with the emergency homeless shelter who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed professional counselor, a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (1) to the extent permitted by Utah Code Title 58; or

(3) a licensed practical nurse or a non-licensed individual working under the supervision of one of the individuals identified in subsection (1) or (2).

R414-33C-7. Reimbursement Methodology.

The Department pays the lower of the amount billed and the rate on the fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay clients.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: September 30, 2009
Notice of Continuation: February 23, 2010
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3]

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-33D
Targeted Case Management by Community Mental Health Centers for Individuals with Serious Mental Illness

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33590
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify service coverage for an individual with serious mental illness.

SUMMARY OF THE RULE OR CHANGE: This change clarifies that a patient who resides in an institution for mental disease is not limited to a maximum of five hours per admission.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate a cost or savings due to this rule change because this rule change simply clarifies service coverage for an individual with serious mental illness.
♦ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide targeted case management services for Medicaid clients.
♦ SMALL BUSINESSES: The Department does not anticipate a cost or savings to small businesses due to this rule change because this rule change simply clarifies service coverage for an individual with serious mental illness.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate a cost or savings to Medicaid providers due to this rule change because this rule change simply clarifies service coverage for an individual with serious mental illness.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate a cost or savings to a single Medicaid provider due to this rule change because this rule change simply clarifies service coverage for an individual with serious mental illness.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Business should not be impacted by this clarification of the maximum number of hours of case management that a person with serious mental illness is eligible for, as this limit is rarely exceeded.

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 Gomez by phone at 801-538-6381, by FAX at 801-237-0785, or by Internet E-mail at kgomez@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-33D. Targeted Case Management by Community Mental Health Centers for Individuals with Serious Mental Illness.
R414-33D-1. Introduction and Authority.

(1) This rule outlines targeted case management services provided to individuals with serious mental illness to assist in gaining access to needed medical, educational, social, and other services.

(2) This rule implements 42 USC 1396n(g), which authorizes targeted case management services and is authorized under UCA 26-18-3.

R414-33D-2. Definitions.

"Serious mental illness" means a serious and often persistent mental illness in an adult or a serious emotional disorder in a child that severely limits the individual's welfare and development or functioning.

R414-33D-3. Client Eligibility Requirements.

Targeted case management is available for individuals with serious mental illness who are categorically or medically needy.

R414-33D-4. Program Access Requirements.

(1) Targeted case management is provided to individuals with serious mental illness for whom a case management needs assessment completed by a qualified targeted case manager documents that:

(a) the individual requires a comprehensive coordinated system of care and treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(b) there is reasonable indication that the individual will access needed services only if assisted by a qualified targeted case manager who in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

(2) Targeted case management services are at the option of the individual in the target population.

(3) Targeted case management services may not restrict an individual's free choice of providers of case management services or other Medicaid services.

R414-33D-5. Service Coverage.

(1) Medicaid covers:

(a) client assessment to determine service needs, including activities that focus on needs identification to determine the need for any medical, educational, social, or other services. Assessment activities include taking client history, identifying the needs of the client and completing related documentation, gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the client;

(b) development of a written, individualized, and coordinated case management service plan based on information collected through an assessment that specifies the goals and actions to address the client's medical, social, educational and other service needs. This includes input from the client, the client's authorized health care decision maker, family, and other agencies knowledgeable about the client, to develop goals and identify a course of action to respond to the client's assessed needs;

(c) referral and related activities to help the client obtain needed services, including activities that help link the client with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the client;

(d) coordinating the delivery of services to the client, including CHEC screening and follow-up;

(e) client assistance to establish and maintain eligibility for entitlements other than Medicaid;

(f) monitoring and follow-up activities, including activities and contacts that are necessary to ensure the targeted case management service plan is effectively implemented and adequately addressing the needs of the client, which activities may be with the client, family members, providers or other entities, and conducted as frequently as necessary to help determine whether services are furnished in accordance with the client's case management service plan, whether the services in the case management service plan are adequate, whether there are changes in the needs or status of the client, and if so, making necessary adjustments in the case management service plan and service arrangements with providers;

(g) contacting non-eligible or non-targeted individuals when the purpose of the contact is directly related to the management of the eligible individual's care. For example, family members may be able to help identify needs and supports, assist the client to obtain services, and provide case managers with useful feedback to alert them to changes in the client's status or needs;

(h) instructing the client or caretaker, as appropriate, in independently accessing needed services; and

(i) monitoring the client's progress and continued need for targeted case management and other services.

(2) The agency may bill Medicaid for the above activities only if;

(a) the activities are identified in the case management service plan and the time spent in the activity involves a face-to-face encounter, telephone or written communication with the client, family, caretaker, service provider, or other individual with a direct involvement in providing or assuring the client obtains the necessary services documented in the service plan; and

(b) there are no other third parties liable to pay for services, including reimbursement under a medical, social, educational, or other program.

(3) Covered case management service provided to a hospital or nursing facility patient, except a patient in an Institution for Mental Disease (IMD) is limited to a maximum of five hours per admission in the 30-day period before the patient's discharge into the community.

(4) Medicaid does not cover:

(a) documenting targeted case management services with the exception of time spent developing the written case management needs assessment, service plans, and 180-day service plan reviews;

(b) teaching, tutoring, training, instructing, or educating the client or others, except when the activity is specifically designed to assist the client, parent, or caretaker to independently obtain client services. For example, Medicaid does not cover client assistance in completing a homework assignment or instructing a client or family member on nutrition, budgeting, cooking, parenting skills, or other skills development;

(c) directly assisting with personal care or daily living activities that include bathing, hair or skin care, eating, shopping, laundry, home repairs, apartment hunting, moving residences, or acting as a protective payee;

(d) routine courier services. For example, running errands or picking up and delivering food stamps or entitlement checks;

(e) direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred. For example, providing medical and psychosocial evaluations, treatment, therapy and counseling, otherwise billable to Medicaid under other categories of service;

(f) direct delivery of foster care services that include research gathering and completion of documentation, assessing adoption placements, recruiting or interviewing potential foster care placements, serving legal papers, home investigations, providing transportation, administering foster care subsidies, or making foster care placement arrangements;

(g) traveling to the client's home or other location where a covered case management activity occurs, nor time spent transporting a client or a client's family member;

(h) services for or on behalf of a non-Medicaid eligible or a non-targeted individual if services relate directly to the identification and management of the non-eligible or non-targeted

individual's needs and care. For example, Medicaid does not cover counseling the client's sibling or helping the client's parent obtain a mental health service;

(i) activities for the proper and efficient administration of the Medicaid State Plan that include client assistance to establish and maintain Medicaid eligibility. For example, locating, completing and delivering documents to a Medicaid eligibility worker;

(j) recruitment activities in which the mental health center or case manager attempts to contact potential service recipients;

(k) time spent assisting the client to gather evidence for a Medicaid hearing or participating in a hearing as a witness; and

(l) time spent coordinating between case management team members for a client.

R414-33D-6. Qualified Providers.

Targeted case management for individuals with serious mental illness must be provided by an individual employed by community mental health centers who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed professional counselor, a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (1) to the extent permitted by Utah Code Title 58; or

(3) a licensed practical nurse or a non-licensed individual who has met the State Division of Substance Abuse and Mental Health's training standards for case managers and who is working under the supervision of one of the individuals identified in subsection (1) or (2).

R414-33D-7. Reimbursement Methodology.

(1) For fee-for-service community mental health centers, the Department pays the lower of the amount billed or the rate on the mental health center's fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(2) For capitated community mental health centers, the Department pays monthly premiums to the centers for all mental health services, including targeted case management.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~September 30,~~]2010
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-302
Eligibility Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33572
FILED: 04/22/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to allow the Department to establish an electronic match system with the Social Security Administration to verify citizenship, and to clarify who may receive Medicaid coverage when residing in an institution.

SUMMARY OF THE RULE OR CHANGE: This amendment includes language that allows the Department to implement an electronic match system with the Social Security Administration for the purpose of verifying citizenship and to identify new Medicaid applicants. This change also removes language from Section R414-302-3 that is no longer necessary and reserves this section for future changes. It further amends language in the text to include the age ranges of individuals who may receive Medicaid while residing in an institution for mental disease.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 211(a) of Pub. L. No. 111-3 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some administrative costs associated with the establishment of an electronic match system with the Social Security Administration. These costs, however, are negligible and there is no data to quantify what those costs would be.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not determine Medicaid eligibility and do not fund or provide Medicaid services.
♦ SMALL BUSINESSES: There are no new administrative costs to small businesses because they do not verify citizenship or identify new Medicaid applicants. In addition, these changes do not affect provider revenue because they do not affect Medicaid services. Further, only the Department will bear any cost associated with the establishment of an electronic match system with the Social Security Administration.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no new administrative costs to Medicaid providers because they do not verify citizenship or identify new Medicaid applicants. In addition, these changes do not affect provider revenue and do not impact Medicaid clients because they do not affect Medicaid services. Further, only the Department will bear any cost associated with the establishment of an electronic match system with the Social Security Administration.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider because the provider does not verify citizenship or identify new Medicaid applicants. In addition, these changes do not affect provider revenue and do not impact a single Medicaid client because they do not affect Medicaid services. Further, only the Department will bear any cost associated with the establishment of an electronic match system with the Social Security Administration.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Streamlined verification of identity and citizenship will benefit all persons entitled to receive services and have an overall positive fiscal impact.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-302. Eligibility Requirements.
R414-302-1. Citizenship and Alienage.

(1) The Department incorporates by reference 42 CFR 435.406 2008 ed., which requires applicants and recipients to be U.S. citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship and identity as described in 42 CFR 435.407.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 221(b)(1) of [~~T~~]the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 221(b)(2) of [~~T~~]the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of such infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for such infant as required under Section 221(b)(3) of [~~T~~]the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(10) The Department may implement an electronic match system with the Social Security Administration to verify citizenship or nationality, and the identity of an applicant for medical assistance. The electronic match system shall meet the requirements of Section 211(a) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

R414-302-3. [~~Local Office Residence~~]Reserved.

[~~Applicants may apply at any local office or outreach location. The Department may require applicants also applying for services from the Department of Workforce Services or foster care Medicaid to apply at the local office in the area where they reside.~~]Reserved.

R414-302-4. Residents of Institutions.

(1) The Department provides Medicaid coverage to individuals who are residents of institutions subject to the limitations related to residents of public institutions, patients in an institution for mental diseases who do not meet the age criteria, and patients in an institution for tuberculosis as defined in 42 CFR 435.1009, 2009 ed., which is incorporated by reference. The

Department also incorporates by reference the definitions in 42 CFR 435.1010, 2009 ed.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease (IMD) who are ages 21 through 64 as non-residents while on conditional or convalescent leave from the institution. A resident of an IMD who is under 21 years of age, or is under 22 years of age and enters an IMD before reaching 21 years of age, is considered to be a resident while on conditional or convalescent leave from the institution.

(5) [~~The~~]For individuals under 22 years of age who become residents of an IMD before reaching 21 years of age, the Department limits Medicaid eligibility [~~for residents of institutions for mental disease~~]to individuals residing in the Utah State Hospital[~~ who meet the age requirements and other eligibility criteria~~].

KEY: public assistance programs, application, eligibility, Medicaid
Date of Enactment or Last Substantive Amendment: [~~April 1,~~]2010
Notice of Continuation: January 25, 2008
Authorizing, and Implemented or Interpreted Law: 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-304-9

A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33573
FILED: 04/22/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify Medicaid's deduction policy for long-term care services.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that the restriction against deducting expenses for long-term care services that an individual accrues during a penalty period or due to substantial home equity only applies to the determination of what an individual owes for long-term care contribution.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because this change only clarifies the deduction policy for long-term care services. It neither increases nor decreases services to Medicaid clients.
♦ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide long-term care services for Medicaid clients.
♦ SMALL BUSINESSES: There is no impact to small businesses because this change only clarifies the deduction policy for long-term care services. It neither increases nor decreases services to Medicaid clients.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and Medicaid clients because this change only clarifies the deduction policy for long-term care services. It neither increases nor decreases services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or Medicaid client because this change only clarifies the deduction policy for long-term care services. It neither increases nor decreases services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This clarification of the rule to assure that current Medicaid practice is consistent with the rule will not change current fiscal impact on business in this area.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) This section sets forth income deductions for aged, blind, disabled and family institutional Medicaid programs.

(2) The Department applies the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, 2005 ed., which are incorporated by reference. The Department applies Subsection 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, which are incorporated by reference. Any additional income deductions or limitations are described in this rule.

(3) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(4) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department deducts from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums are deducted in the month due. The payment is not pro-rated. The Department deducts the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums the Department pays for or reimburses to recipients.

(b) The Department deducts from income the portion of a combined premium, attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(5) The Department deducts medical expenses from income only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill will not be paid by Medicaid or by a third party;

(c) a paid medical bill can be deducted only through the month it is paid. No portion of any paid bill can be deducted after the month of payment.

(6) To determine the cost of care contribution for long-term care services, [~~T~~]the Department does not deduct medical or remedial care expenses that the Department is prohibited from paying because the expenses are incurred during a penalty period imposed due to a transfer of assets for less than fair market value. The Department does not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 6014 of Pub. L. No. 109-171 because the equity value of the individual's home exceeds the limit set by such law. The Department will not deduct such expenses during the month the services are received nor for any month after the month services are received even when such expenses remain unpaid.

(7) The Department does not allow a medical expense as an income deduction more than once.

(8) A medical expense allowed as an income deduction must be for a medically necessary service. The Department of Health decides if services are medically necessary.

(9) The Department deducts only the amount of pre-paid medical expenses that equals the cost of services actually received in the month such expenses are paid. Payments a client makes for medical services in a month before the month the services are actually received cannot be deducted from income.

(10) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the agency told the client that the Medicaid provider cannot use the provider's funds to pay the client's spenddown and that the provider cannot loan the client money for the client to pay the spenddown.

(11) A client may meet the spenddown by paying the agency the amount with cash or check, or by providing to the agency proof of medical expenses the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services received in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses cannot be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the agency or by presenting a cash or check payment to the agency equal to the spenddown amount.

(12) The Department cannot accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. The Department cannot accept spenddown payments from a client if the funds were loaned to the client by a Medicaid provider.

(13) Institutionalized clients are required to pay all countable income remaining after allowable income deductions to the institution in which they reside as their contribution to the cost of their care.

(14) A client who pays a cash spenddown, or a liability amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or liability paid up to the amount of bills paid by the client. The following criteria applies:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or

any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the State Medicaid Plan.

(b) The expense must be for a service received during the benefit month.

(c) The Department will not refund any portion of any medical expense the client uses to meet a Medicaid spenddown or to reduce the liability owed to the institution because the client assumes responsibility to pay any expenses used to meet a spenddown or reduce a liability.

(d) A refund cannot exceed the actual cash spenddown or liability amount paid by the client.

(e) The Department does not refund spenddown or liability amounts paid by a client based on unpaid medical expenses for services the client receives during the benefit month. The client may present to the agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The unpaid bills may be used to meet or reduce the spenddown the client owes for a future month of Medicaid coverage to the extent such bills remain unpaid at the beginning of such future month.

(f) The Department reduces a refund by the amount of any unpaid obligation the client owes the Department.

(15) The Department deducts a personal needs allowance for residents of medical institutions equal to $45.

(16) When a doctor verifies that a single person, or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the Department deducts a personal needs allowance equal to the current Medicaid Income Limit (BMS) for one person, defined in R414-304-11(6), for up to six months to maintain the individual's community residence.

(17) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver is eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized. The Department applies the provisions of Section 1924(d) of the Compilation of Social Security Laws, or the provisions of 42 U.S.C. 435.726 or 435.832 to determine the deduction for a spouse and family members.

(18) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(19) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown only if the services were not provided by the Medicaid-contracted, mental health provider.

KEY: financial disclosures, income, budgeting
Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~]2010
Notice of Continuation: January 25, 2008
Authorizing, and Implemented or Interpreted Law: 26-18-[~~1~~]3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-305
Resources

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33574
FILED: 04/22/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update and correct language that excludes as a countable resource the home of an institutionalized person, and to limit nursing home and long-term care services when an individual's home has an equity value of over $500,000.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that the value of a home does not determine whether the home will be excluded as a countable resource. Nevertheless, it also clarifies that a separate test exists where the full equity value of the home is counted to determine whether the individual may qualify for nursing home or long-term care services. In addition, this amendment clarifies that the Department must exclude as a resource certain properties of American Indians as required under the American Recovery and Reinvestment Act of 2009.

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

MATERIALS INCORPORATED BY REFERENCES:

- Updates 42 CFR 435.840, published by Office of the Federal Register, 10/01/2009
- Removes 42 CFR 435.843, published by Office of the Federal Register, 10/01/2008
- Updates 42 CFR 435.845, published by Office of the Federal Register, 10/01/2009

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because this amendment does not increase Medicaid coverage for any group, does not reduce existing coverage, and does not modify eligibility criteria to determine how many individuals may become eligible for long-term care services.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not determine Medicaid eligibility and do not fund long-term care services for Medicaid clients.
♦ SMALL BUSINESSES: There is no impact to small businesses because this amendment does not increase Medicaid coverage for any group, does not reduce existing coverage, and does not modify eligibility criteria to determine how many individuals may become eligible for long-term care services.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and Medicaid clients because this amendment does not increase Medicaid coverage for any group, does not reduce existing coverage, and does not modify eligibility criteria to determine how many individuals may become eligible for long-term care services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for a single Medicaid provider or a Medicaid client because this amendment does not increase Medicaid coverage for any group, does not reduce existing coverage, and does not modify eligibility criteria to determine how many individuals may become eligible for long-term care services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change does not alter coverage and should not have a fiscal impact on business.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for aged, blind and disabled Medicaid and aged, blind and disabled institutional Medicaid.

(2) To determine eligibility of the aged, blind or disabled, the Department incorporates by reference 42 CFR 435.840, [~~435.843,~~]435.845, [~~2008~~]2009 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, 2009 ed. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department incorporates by reference Section 1917(d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2009. The Department shall not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

(4) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(5) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one-person household and $3,000 for a two-person household.

(6) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

(7) The Department bases non-institutional and institutional Medicaid eligibility on all available resources owned by the client, or deemed available to the client from a spouse or parent. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 2009 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(8) Any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act is not countable. Any money from the resource that is given to the child as unearned income is a countable resource beginning the month after the child receives it.

(9) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

(10) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The individual shall receive one three-month extension if more than three months is needed to complete the actual purchase. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(11) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resources exists:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(12) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

(13) For an institutionalized individual, a home or life estate is not considered an exempt resource.

(14) To determine eligibility for nursing facility or other long-term care services, the Department excludes the value of the individual's principal home or life estate from countable resources if [~~the individual's equity in the home or life estate does not exceed the equity limit of $500,000 as established in 42 U.S.C. 1396p(f)(1)(A), or as increased according to the provisions of 42 U.S.C. 1396p(f)(1)(C) of the Compilation of the Social Security Laws, and~~]one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under age 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

(15) Even if the conditions in Subsection R414-305-1(14) are met, an applicant or client is ineligible to receive nursing facility services or other long-term care services [~~If~~]if the full equity value of the individual's home or life estate exceeds $500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C)[~~, the individual is ineligible for nursing facility or other long-term care services~~] unless the individual's spouse, or the individual's child who is under age 21 or is blind or permanently disabled lawfully resides in the home. The individual may qualify for Medicaid to cover ancillary services only.

(16) For A, B and D Medicaid, the Department shall not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(17) A previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231, may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. The funds cannot be exempted retroactively more than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(18) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(19) The Department excludes resources of an SSI recipient who has a plan for achieving self support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self support goals.

(20) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(21) Business resources required for employment or self-employment are not counted.

(22) For the Medicaid Work Incentive Program, the Department excludes the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if such funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(23) After qualifying for the Medicaid Work Incentive Program, these resources described in R414-305-1(22) will continue to be excluded throughout the lifetime of the individual to qualify for A, B or D Medicaid programs other than the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(24) Assets shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(25) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(26) The Department excludes from countable resources the following resources:

(a) Amounts an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(b) Amounts an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt.

(c) Amounts an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009,

Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(d) The value of any reduction in Consolidated Omnibus Budget Reconciliation Act (COBRA) premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(e) Certain property and rights of federally-recognized American Indians including certain tribal lands[~~,~~] held in trust which are located on or near a reservation, or allotted lands located on a previous reservation, ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources), and ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(27) Life estates.

(a) For non-institutional Medicaid, life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in paragraph 14 of this section.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

. . . . . .

KEY: Medicaid, resources
Date of Enactment or Last Substantive Amendment: [~~January 1~~], 2010
Notice of Continuation: January 31, 2008
Authorizing, and Implemented or Interpreted Law: 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-401
Nursing Care Facility Assessment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33594
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The 2010 Utah Legislature increased appropriations for this program through an increase to the assessment on Medicaid beds in nursing facilities. This change implements that assessment increase.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), nonintermediate care facilities for the mentally retarded are assessed at the uniform rate of $12.25 per patient day, which is an increase from the previous $10.20 per patient day assessment. This change becomes effective 07/01/2010. This increase in assessment allows for the appropriated increase in reimbursement rates and for the change in assessment for hospice stays in nursing homes that are paid at the higher, assessment increased, reimbursement rates. In Subsection R414-401-4(7), a provision is added to allow providers to amend previously submitted assessment reports for 90 days following original submission.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Budget neutral due to collection of $983,400 total funds from nursing and swing bed facilities and an increase in state-funded reimbursement of $983,400 total funds to nursing home and swing bed facilities.
♦ LOCAL GOVERNMENTS: Local hospitals with swing beds will also have no increased revenue. Funding will be applied for swing bed reimbursement rates beginning in calendar year 2011. Inasmuch as swing beds are variable, it is not possible to determine the additional funding that will be made available to these facilities.
♦ SMALL BUSINESSES: Nursing facility providers for small businesses will see a net enhanced revenue of approximately $700,000 as a result of increased federal matching funds. In addition, there is an estimated increase in cost of $21,678 to non-Medicaid certified facilities, based on four facilities and an estimated number of 10,579 patient days.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Nursing facility providers will see a net enhanced revenue of approximately $700,000 as a result of increased federal matching funds. In addition, there is an estimated increase in cost of $21,678 to non-Medicaid certified facilities, based on four facilities and an estimated number of 10,579 patient days.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of $2.05 per non-Medicare patient day from each nursing facility. This increase in the assessment collection will be used to draw down federal matching funds. All Medicaid certified nursing and swing bed facilities will gain from this process. The amount of gain depends on the number of Medicaid patients in the facility. In addition, there is an average cost of $5,420 to four non-Medicaid certified facilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This assessment supported by the majority of long term care facilities will generate additional revenue for Medicaid certified facilities to support care of Medicaid recipients.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, Executive Director

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

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

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

R414-401-2. Definitions.

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

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

R414-401-3. Assessment.

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

(2) The uniform rate of assessment for every facility is [~~$10.20~~]$12.25 per non-Medicare patient day provided by the facility, except that intermediate care facilities for the mentally retarded shall be assessed at the uniform rate of $6.53 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

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

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

R414-401-4. Reporting and Auditing Requirements.

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

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

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

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

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

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

(7) Providers may update previously submitted patient day assessment reports for 90 days following the original submission date.

R414-401-5. Penalties and Interest.

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

KEY: Medicaid, nursing facility
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
Notice of Continuation: June 25, 2009
Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a

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

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33596
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to continue the Quality Improvement Incentive programs.

SUMMARY OF THE RULE OR CHANGE: This amendment continues existing state fiscal year 2011 Quality Incentive programs.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no budget impact because the changes to this rule do not alter the overall amount of state and federal funds that regulated health care facilities may receive.
♦ LOCAL GOVERNMENTS: There is no budget impact because the changes to this rule do not alter the overall amount of state and federal funds that local government-operated health care facilities may receive.
♦ SMALL BUSINESSES: This amendment impacts small and large businesses equally. The aggregate paid to Medicaid-certified nursing homes does not change. 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.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The aggregate paid to Medicaid-certified nursing homes does not change. 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: There are no compliance costs because there are only increases in funds for a nursing facility that takes advantage of the quality improvement incentives that are available.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This incentive program is voluntary and should have an overall positive fiscal impact.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-4. Quality Improvement Incentive.

(1) The incentive period is from July 1, 20[~~09~~]10 through May 31, 201[~~0~~]1.

(2) In order for a facility to qualify for any Quality Improvement Incentive or initiative in subsections (3) or (4):

(a) The application form and all supporting documentation for that Incentive or Initiative must be faxed in or mailed with a postmark during the incentive period. Failure to include all required supporting documentation precludes a facility from qualification.

(b) Facilities choosing to mail in applications and supporting documentation are responsible to ensure that documents are mailed to the correct address, as follows:

Via United States Postal Service
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service or Federal Express
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(c) The facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

(3)(a) Upon federal approval of the Nursing Care Facilities State Plan Amendment for the quality program outlined in this subsection (3), funds in the amount of $1,000,000 shall be set aside from the base rate budget annually to reimburse current Medicaid certified non-ICF/MR facilities that have:

(i) a meaningful quality improvement plan which includes the involvement of residents and family;

(ii) a demonstrated process of assessing and measuring that plan;

(iii) customer satisfaction surveys conducted by an independent third-party in each quarter of the incentive period, along with an action plan addressing survey items rated below average for the year;

(iv) a plan for culture change along with an example of how the facility has implemented culture change;

(v) an employee satisfaction program;

(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;

(vii) a facility that receives a substandard quality of care level F, H, I, J, K, or L during the incentive period is eligible for only 50% of the possible reimbursement. A facility receiving substandard quality of care level F, H, I, J, K, or L in more than one survey during the incentive period is ineligible for reimbursement under this incentive.

(b) The Department shall distribute incentive payments to qualifying, current Medicaid certified facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities.

(c) If a facility seeks administrative review of the determination of a survey violation, the incentive payment will be withheld pending the final administrative adjudication. If violations are found not to have occurred, 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.

(4) Upon federal approval of the Nursing Care Facilities State Plan Amendment for the quality program outlined in this subsection (4) and in addition to the above incentive, funds in the amount of $4,275,900 shall be set aside from the base rate budget in state fiscal year 201[~~0~~]1 for use in state fiscal year 201[~~0~~]1.

(a) Qualifying, current Medicaid certified providers may receive up to $590.43 total, across all initiatives in Subsection R414-504-4(4), for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive and for each initiative in this incentive is the count in the facility as at the beginning of the incentive period.

(b) A facility may not receive more for any initiative than its documented costs for that initiative.

(c) In order to qualify for any of the quality improvement initiatives in Subsection R414-504-4(4)(d):

(i) Each item purchased under initiatives (i) through (iii) of Subsection R414-504-4(4)(d) must be purchased by the end of the incentive period, and installed during the incentive period. Each item purchased under initiatives (iv) to (ix) of Subsection R414-504-4(d) must be purchased by the end of the incentive period, and installed between July 1, 200[~~8~~]9, and May 31, 201[~~0~~]1.

(ii) A facility, with its application, must submit a detailed description of the functionality of each item purchased, attesting to its meeting all of the criteria for that initiative.

(iii) A facility, with its application, must submit detailed documentation supporting all purchase, installation and training costs for the initiative. This documentation must include invoices and proof of purchase (i.e. copies of cancelled checks, credit card slips, etc.).

(iv) A facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

(d) Each Medicaid provider may apply for the following quality improvement initiatives:

(i) Incentive for facilities to purchase or enhance nurse call systems. Qualifying Medicaid providers may receive up to $391 for each Medicaid certified bed. Qualifying criteria include the following:

(A) The nurse call system 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) Incentive for facilities to purchase new patient lift systems capable of lifting patients weighing up to 400 pounds each. Qualifying Medicaid providers may receive up to $45 for each Medicaid certified bed per patient lift, with a maximum of $90 for each Medicaid certified bed.

(iii) Incentive for facilities to purchase new patient bathing systems. Qualifying Medicaid providers may receive up to $110 for each Medicaid certified bed.

(A) 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.

(iv) Incentive for facilities to purchase or enhance patient life enhancing devices. Qualifying Medicaid providers may receive up to $495 for each Medicaid certified bed. Patient life enhancing devices must be one or more of the following:

(A) Telecommunication enhancements primarily for patient use. This may include land lines, wireless telephones, voice mail and push to talk devices. Overhead paging, if any, must be reduced.

(B) Wander management systems and patient security enhancement devices.

(C) Computers and game consoles for patient use.

(D) Garden enhancements.

(E) Furniture enhancements for patients.

(v) Incentive for facilities to educate staff on quality. Qualifying Medicaid providers may receive up to $110 for each Medicaid certified bed. The education or training must:

(A) Be provided by an industry recognized organization, and

(B) Have a patient centered perspective focused on improving quality of life or care for patients.

(vi) Incentive for facilities to purchase or make improvements to vans and van equipment for patient use. Qualifying Medicaid providers may receive up to $320 for each Medicaid certified bed.

(vii) Incentive for facilities to:

(A) Purchase or lease new or enhance existing clinical information systems software, which incorporates advanced technology into improved patient care including better integration, capture of more information at the point of care, more automated reminders etc. Qualifying Medicaid providers may receive up to $109 for each Medicaid certified bed. The following clinical tracking minimum requirements must all be included in the software:

(I) Care plans;

(II) Current conditions;

(III) Medical orders;

(IV) Activities of daily living;

(V) Medication administration records;

(VI) Timing of medications;

(VII) Medical notes; and

(VIII) Point of care data tracking.

(B) Purchase or lease new or enhance existing clinical information systems hardware. Qualifying Medicaid providers may receive up to $90 for each Medicaid certified bed. The hardware must facilitate the tracking of patient care and integrate the collection of data into clinical information systems software that meets all the tracking criteria in Subsection R414-504-4(4)(d)(vii)(A).

(viii) Incentive for facilities to purchase a new or enhance its existing heating, ventilating, and air conditioning system (HVAC). Qualifying Medicaid providers may receive up to $162 for each Medicaid certified bed.

(ix) Incentive for facilities to use innovative means to improve the residents' dining experience. These changes may include meal ordering, dining times or hours, atmosphere, more food choices etc. Qualifying Medicaid providers may receive up to $111 for each Medicaid certified bed.

(A) A facility, with its application, must submit a detailed description of the changes along with supporting documentation and proof of costs incurred.

(B) Costs under this initiative are limited to incremental costs resulting from the dining program changes.

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/MRs 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) The incentive period is from July 1, 20[~~09~~]10, through May 31, 201[~~0~~]1.

(3)(a) The Department shall set aside $200,000 annually from the base rate budget for incentives to current Medicaid certified facilities. In order for a facility to qualify for an incentive:

(i) The application form and all supporting documentation for this incentive must be faxed in or mailed with a postmark during the incentive period. Failure to include all required supporting documentation precludes a facility from qualification.

(ii) Facilities choosing to mail in applications and supporting documentation are in addition responsible to ensure that documents are mailed to the correct address, as follows:

Via United States Postal Service
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service or Federal Express
Utah Department of Health
DHCF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(iii) The facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

(b) In order to qualify for an incentive, a facility must have:

(i) a meaningful quality improvement plan which includes the involvement of residents and family;

(ii) a demonstrated means to measure that plan;

(iii) customer satisfaction surveys conducted by an independent third-party in each quarter of the incentive period;

(iv) an employee satisfaction program; and

(v) 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.

(vi) A facility receiving a "condition of participation" during the incentive period is eligible for only 50% of the possible reimbursement.

(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: [~~July 1, 2009~~]2010
Notice of Continuation: December 12, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-35a

Health, Health Systems Improvement, Emergency Medical Services
R426-6
Emergency Medical Services Competitive Grants Program Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33576
FILED: 04/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is revised to match the change in S.B. 178 from the 2010 Legislative Session. Grant funds are available to all licensed or designated Emergency Medical Services (EMS) agencies. (DAR NOTE: S.B. 178 (2010) is found at Chapter 161, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Rule change will allow grant funds to be distributed not only to rural agencies but to agencies statewide.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-207

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No effect on state budget as the available grant monies remain the same. Grant monies will be distributed to both rural and urban EMS Agencies.
♦ LOCAL GOVERNMENTS: Grants are a voluntary process. This rule change will make grant monies available to all providers. The impact is anticipated as positive.
♦ SMALL BUSINESSES: Grants are a voluntary process. This rule change will make grant monies available to all providers. The impact is anticipated as positive.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Grants are a voluntary process. This rule change will make grant monies available to all providers. The impact is anticipated as positive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Grants are a voluntary process. The application process has been developed with input from regulated providers and will not pose a barrier for grant monies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Making grants available to all EMS agencies will have a positive fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Allan Liu by phone at 801-273-6664, by FAX at 801-273-4165, or by Internet E-mail at aliu@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-6. Emergency Medical Services Competitive Grants Program Rules.
R426-6-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide guidelines for the equitable distribution of competitive grant funds specified under the Emergency Medical Services Grants Program.

R426-6-2. Definitions.

(1) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS.

(2) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS.[

~~(3) "Rural area" means an exclusive geographic service area as provided under Section 26-8a-402, that is a city, town, or other similar community with a population of 10,000 or less based on the most recently published data of the United States Census Bureau.~~

~~(4) "Rural county area" means an exclusive geographic service area as provided under Section 26-8a-402, that is a county of the fourth, fifth, or sixth class as provided under Section 17-50-501.~~]

R426-6-3. Eligibility.

(1) Competitive grants are available for use specifically related to the provision of emergency medical services.

(2) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

[~~(3) If an entity is considered a rural area or a rural county area, and fits the following criteria, they are eligible for competitive grant funds:~~

~~(a) licensed EMS agencies;~~
~~(b) designated EMS agencies;~~
~~(c) political subdivisions of Utah state or local governments that are seeking grants to provide for initial training to become licensed or designated EMS agencies; and~~
~~(d) non-profit entities that are seeking grants to provide for initial training to become licensed or designated EMS agencies.~~
~~(4)~~](3) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

R426-6-4. Grant Implementation.

In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.

(1) Grant awards are effective on July 1 and must be used by June 30 of the following year.

(2) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

R426-6-5. Competitive Grant Process.

(1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.

(2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.

(3) It is the intent of the EMS Committee that there be local EMS council or committee review of EMS grant applications. Therefore, copies of grant applications should be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for review and recommendation to the State Grants subcommittee.

(4) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.

(5) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

(6) Grant recipients shall provide matching funds in the amount specified in the Grant Program Guidelines.

(7) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS issues.

(8) The Grants Subcommittee shall make recommendations based upon the following criteria:

(a) the impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county recommendation;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.

R426-6-6. Interim or Emergency Grant Awards.

(1) The Grants Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~July 9, 2009~~]2010
Notice of Continuation: October 31, 2007
Authorizing, and Implemented or Interpreted Law: 26-8a

Health, Health Systems Improvement, Emergency Medical Services
R426-8
Emergency Medical Services Per Capita Grants Program Rules

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33577
FILED: 04/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is revised to match the change in S.B. 178 from the 2010 Legislative Session. Grant funds are available to all licensed or designated Emergency Medical Services (EMS) agencies. (DAR NOTE: S.B. 178 (2010) is found at Chapter 161, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The rule change will allow grant funds to be distributed not only to rural agencies but to agencies statewide.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-207

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No effect on the state budget as the available grant monies remain the same. Grant monies will be distributed to both rural and urban EMS agencies.
♦ LOCAL GOVERNMENTS: Grants are a voluntary process. This rule change will make grant monies available to all providers. The impact is anticipated as positive.
♦ SMALL BUSINESSES: Grants are a voluntary process. This rule change will make grant monies available to all providers. The impact is anticipated as positive.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Grants are a voluntary process. This rule change will make grant monies available to all providers. The impact is anticipated as positive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Grants are a voluntary process. The application process has been developed with input from regulated providers and will not pose a barrier for grant monies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Making grants available to all EMS agencies will have a positive fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Allan Liu by phone at 801-273-6664, by FAX at 801-273-4165, or by Internet E-mail at aliu@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-8. Emergency Medical Services Per Capita Grants Program Rules.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26 chapter 8a.

(2) The purpose of this rule provides guidelines for the equitable distribution of per capita grant funds specified under the Emergency Medical Services (EMS) Grants Program.

R426-8-2. Definitions.

(1) [~~"Rural area" means an exclusive geographic service area as provided under Section 26-8a-402, that is a city, town, or other similar community with a population of 10,000 or less based on the most recently published data of the United States Census Bureau.~~]County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS.

(2) [~~"Rural county area" means an exclusive geographic service area as provided under the Section 26-8a-402, that is a county of the fourth, fifth, or sixth class as provided under Section 17-50-501.~~]Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS.

R426-8-3. Eligibility.

(1) Per capita grants are available only to licensed EMS ambulance services, paramedic services, EMS designated first response units and EMS dispatch providers that [~~are within rural areas or rural county areas and~~]are either:

(a) agencies or political subdivisions of local or state government or incorporated non-profit entities; or

(b) for-profit EMS providers that are the primary EMS provider for a service area.

(2)(a) A for-profit EMS provider is a primary EMS provider in a geographical service area if it is licensed for and provides service at a higher level than the public or non-profit provider;

(b) The levels of EMS providers are in this rank order:

(A) Paramedic rescue;

(B) Paramedic ambulance;

(C) EMT-Intermediate;

(D) EMT-IV; and

(E) EMT-Basic.

(c) Paramedic interfacility transfer ambulance, EMT-Interfacility ambulance transport, or paramedic tactical rescue units are not eligible for per capita funding because they cannot be the primary EMS provider for a geographical service area.

(3) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

(4) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

R426-8-4. Grant Implementation.

(1) Per Capita grants are available for use specifically related to the provision of EMS.

(2) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(3) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(4) No matching funds are required for per capita grants.

(5) Per capita funds may be used as matching funds for competitive grants.

R426-8-5. Application and Award Formula.

(1) Grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.

(2) Agency applicants shall certify agency personnel rosters as part of the grant application process.

(a) A certified individual who works for both a public and a for-profit agency may be credited only to the public or non-profit licensee or designee.

(b) Certified individuals may be credited for only one agency. However, if a dispatcher is also an EMT, EMT-I, EMT-IA, or paramedic, the dispatcher may be credited to one agency as a dispatcher and one agency as an EMT, EMT-I, EMT-IA, or paramedic.

(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.

(3) The Department shall allocate funds by using the following point totals for agency-certified personnel: certified Dispatchers = 1; certified Basic EMTs = 2; certified Intermediate EMTs and Intermedi[e]ate-Advanced EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated EMS dispatch agency and designated EMS first response unit as a date as specified by the Department[~~of March 1~~] immediately prior to the grant year, which begins July 1. To comply with Legislative intent, the point totals of each eligible agency will be multiplied by the current county classification as provided under Section 17-50-501.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~July 8, 2009~~]2010
Notice of Continuation: January 24, 2006
Authorizing, and Implemented or Interpreted Law: 26-8a

Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33601
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary or obsolete definitions are removed, new definitions are added, references are updated, and language is changed to reflect the provisions and terms of H.B. 140 (2010 General Session). Other changes remove incorrect terms or unnecessary words from definitions. (DAR NOTE: H.B. 140 (2010) is found at Chapter 249, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: Obsolete or unnecessary definitions in Subsections R477-1-1(29), (43), (54), (61), (79), (80), (85), and (97) are removed. New definitions at: Subsection R477-1-1(13) "Alternative State Application Program", Subsection R477-1-1(32) "Detailed Position Record Management Report", and Subsection R477-1-1(67) "Misconduct", Subsection R477-1-1(71) "Performance Improvement Plan", and Subsection R477-1-1(97) "Settling Period" are added. Subsection R477-1-1(50) is changed to differentiate safety sensitive from data sensitive. Subsection R477-1-1(79) "Post Accident Drug or Alcohol Test" is made more concise. Clarifying language is added to several definitions and superfluous language is removed from others. Unnecessary terms are removed and references are updated in various places.

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

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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:

♦ Gary Schow by phone at 801-537-9051, by FAX at 801-538-3081, or by Internet E-mail at gschow@utah.gov
♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

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 Title 67, Chapter 19, Utah State Personnel Management Act[~~DHRM rules~~].

(10) Agency Head: The executive director or commissioner of each agency or 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.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

([~~14~~]15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

([~~15~~]16) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

([~~16~~]17) 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.

([~~17~~]18) Career Mobility: A time limited assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

([~~18~~]19) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

([~~19~~]20) Career Service Exempt Employee: An employee appointed to work for a[~~n unspecified~~] period of time, [~~or who serves~~]serving at the pleasure of the appointing authority, [~~and~~]who may be separated from state employment at any time without just cause.

([~~20~~]21) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section[~~s~~] 67-19-15[~~ and R477-2-1~~].

([~~21~~]22) Career Service Status: Status granted to employees who successfully complete a probationary period for[~~ competitive~~] career service positions.

([~~22~~]23) 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 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.

([~~23~~]24) 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.

([~~24~~]25) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

([~~25~~]26) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

([~~26~~]27) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

([~~27~~]28) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

([~~28~~]29) 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 may not accrue benefits.[

~~(29) Corrective Action: A documented administrative action to address substandard performance of an employee under Section R477-10-2.~~]

(30) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(31) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(32) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

([~~32~~]33) DHRM: The Department of Human Resource Management.

([~~33~~]34) 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.

([~~34~~]35) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

([~~35~~]36) Disciplinary Action: Action taken by management under Rule R477-11.

([~~36~~]37) Dismissal: A separation from state employment for cause under Section R477-11-2.

([~~37~~]38) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008)[~~5 (1993)~~], requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

([~~38~~]39) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

([~~39~~]40) Employment Eligibility 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.

([~~40~~]41) "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.

([~~41~~]42) 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.

([~~42~~]43) 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.[

~~(43) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).~~]

(44) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(45) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(46) 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.

(47) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(48) 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.

(49) 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~~]Office.

(50) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

([~~a~~]i) requiring an employee to operate [~~motorized machinery~~]a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

([~~b~~]ii) directly related to law enforcement;

([e]iii) involving direct access or having control over direct access to controlled substances;

([~~d~~]iv) directly impacting the safety or welfare of the general public;

([e]v) requiring an employee to carry or have access to firearms; or

([~~f~~]b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits;[~~ or~~]

(vi) household composition; or

(vii) driver license

(51) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(52) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(53) HRE: Human Resource Enterprise; the state human resource management information system.[

~~(54) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.~~]

([~~55~~]54) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

([~~56~~]55) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([~~57~~]56) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

([~~58~~]57) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

([~~59~~]58) 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~~]is applied to each position in the group.

([~~60~~]59) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.[

~~(61) Job Identification Number: A unique number assigned to a job by DHRM.~~]

([~~62~~]60) Job Requirements: Skill requirements defined at the job level.

([~~63~~]61) 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~~]skills, responsibilities, knowledge and requirements.

([~~64~~]62) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

([~~65~~]63) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

([~~66~~]64) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

([~~67~~]65) Market Comparability Adjustment: Legislatively approved change to a salary range for a job based on a compensation survey conducted by DHRM.

([~~68~~]66) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(67) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

([~~69~~]68) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

([~~70~~]69) Nonfeasance: Failure to perform either an official duty or legal requirement.

([~~71~~]70) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(71) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(72) 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.

(73) 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.

(74) 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.

(75) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-2 for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review [~~Board~~]Office, or the classification appeals procedure.

(76) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

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

(78) Position Identification Number: A unique number assigned to a position for FTE management.[

~~(79) 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.~~

~~(80) 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.~~]

([~~81~~]79) 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 or driving a state vehicle:

(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~~]there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(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 alcohol or a controlled substance.

([~~82~~]80) Preemployment Drug Test: A drug test conducted on final candidates for a highly sensitive position or on a current employee prior to assuming highly sensitive duties.

([~~83~~]81) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

([~~84~~]82) 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.[

~~(85) 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.~~]

([~~86~~]83) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

([~~87~~]84) Promotion: An action moving an employee from a position in one job to a position in another job having a higher [~~maximum~~]salary [~~step~~]range maximum.

([~~88~~]85) 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.

([~~89~~]86) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

([~~90~~]87) Reappointment: Return to work of an individual from the reappointment register[~~, whose accrued annual leave, converted sick leave, compensatory time and excess hours in the employee's former position were cashed out upon separation~~] after separation from employment.

([~~91~~]88) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

([~~92~~]89) 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.

([~~93~~]90) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

([~~94~~]91) 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.

([~~95~~]92) 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.

([~~96~~]93) 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.~~

~~(97) 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.~~]

([~~98~~]94) Requisition: An electronic document used for [~~Utah Job Match~~]HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

([~~99~~]95) Salary Range: [~~The segment of an approved pay plan assigned to a job.~~]An established minimum salary rate and maximum salary rate assigned to a job.

([~~100~~]96) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(97) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

([~~101~~]98) 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.

([~~102~~]99) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

([~~103~~]100) 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) 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.

([~~104~~]101) Unlawful Discrimination: An 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 factor, as prohibited by law.

([~~105~~]102) 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.

([~~106~~]103) 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.

([~~107~~]104) 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.

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: [~~October 1, 2009~~]2010
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.: 33602
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary language is removed. Some terms are replaced with more proper terms. Types of records maintained by the Department of Human Resource Management (DHRM) are outlined more definitively.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-2-4(2) is reduced. Subsection R477-2-5(1) is expanded with greater detail. Various terms are replaced with more correct terms. Unnecessary language is removed from Subsection R477-2-5(7) and Section R477-2-7.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-3-1 and Section 63G-2-3 and Section 63G-5-2 and Section 63G-7-9 and Section 67-19-18 and Section 67-19-6

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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 by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

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

These rules apply to the executive branch of Utah State Government and its career and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

(1) members of the Legislature and legislative employees;

(2) members of the judiciary and judicial employees;

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

(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Office of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch;

(7) employees of quasi-governmental agencies and special service districts;

(8) employees in any position that is determined by statute to be exempt from these rules.

R477-2-2. Compliance Responsibility.

Agencies shall comply with these rules.

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed 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 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~~]shall 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 may not be based on race, religion, national origin, color, gender, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor.

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) 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.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

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

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

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

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

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

R477-2-5. Records.

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and[~~/or~~] applicable federal laws. DHRM [~~will~~]shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

([~~b~~]c) records of actions affecting employee salary history, [~~current~~]classification history, title and salary range, [~~salary history,~~]employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files containing electronic or hard copy records of the following:

(a) employee signed overtime agreement, personnel actions[~~-records~~], notices of [~~corrective~~]performance improvement plans or disciplinary actions, performance evaluation[~~-record~~]s, separation and leave without pay notices, including forms for PEHP and URS such as employee benefits notification forms and military leave worksheets;

(b) copies of professional licensure, training certification and academic transcripts, when required by the job; and

(c) other documents required by agency management; [~~and~~

~~(d) year end leave summary records.~~]

(3) DHRM shall maintain, on behalf of agencies, a separate confidential file for each of the following:

(a) Medical [~~File~~]Records: all information pertaining to medical issues, including documents for Family Medical and Leave Act[~~-records~~], workers compensation, long-term disability, medical and dental enrollment forms [~~which~~]containing health related information, health statements, [~~workers compensation records, long-term disability documentation~~], and applications for additional life insurance.

(i) This i[~~I~~]nformation [~~in this file shall be~~]is private, controlled, or exempt [~~information~~]in accordance with Title 63G-2.

(b) ADA [~~file~~]Records: [~~records~~]Documents pertaining to requests for reasonable accommodation, associated medical information, and the interactive process required by the ADA.

(i) information in this file is exempt from the provisions of Title 63G-2.

(c) Fitness for Duty and Drug and Alcohol Testing [~~File~~]Records: information regarding the results from fitness for duty evaluations and drug testing.

(i) Information in this file [~~shall be~~]is private or controlled in accordance with Title 63G-2.

(d) I-9 [~~File~~]Records: 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) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy 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) 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 Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical[~~,~~] and I-9 [~~files~~]records to the new agency. [~~The files shall contain records according to Subsections R477-2-5(2) or R477-2-5(3).~~]

(8) An e[~~E~~]mployee[~~s~~] who violates confidentiality [~~are~~]is subject to disciplinary action and may be personally liable.

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

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

[~~All career and career service exempt e~~]Employees [~~appointed on and after November 7, 1986, as a~~]newly hired, rehired, [~~agency transfer~~]or placed through reciprocity with or assimilation from another career service jurisdiction [~~must~~]shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the

Employment Eligibility 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 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 state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, in accordance with Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
Date of Enactment or Last Substantive Amendment: [~~October 1, 2009~~]2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2-3; 63G-5-2; 63G-7-9; 67-19-6; 67-19-18

Human Resource Management, Administration
R477-3
Classification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33614
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made in response to H.B. 140 (2010 General Session), articulating job classification applicability and the process for position classification grievances in more detail. (DAR NOTE: H.B. 140 (2010) is found at Chapter 249, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-3-1(1), those exempted from classification are defined. In Section R477-3-5, the process for position classification grievances is defined in greater detail.

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

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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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 by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

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

(1) The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions except for those exempted in 67-19-12 (2), which include:

(a) employees already exempted from DHRM rules in R477-2-1;

(b) [~~employees in a personal and confidential relationship to an elected official as defined in Subsection 67-19-15(1)(k);~~]all employees in:

(i) the office and residence of the governor;

(ii) the Utah Science Technology and Research Initiative (USTAR);

(iii) the Public Lands Policy Coordinating Council;

(iv) the Office of the Utah State Auditor; and

(v) the Utah State Treasurer's Office;

(c) employees of the State Board of Education, who are licensed by the State Board of Education;

(d) employees in any position that is determined by statute to be exempt from classified service;

(e) employees whose agency has authority to make rules regarding performance, compensation, and bonuses for its employees;

(f) department heads listed in 67-19-22 and other persons appointed by the governor pursuant to statute;[

~~(f) employees of the Department of Community and Culture whose positions are designated as executive/professional positions by the executive director of the Department of Community and Culture with the concurrence of the executive director of DHRM;~~]

(g) temporary employees in Schedule TL or IN who work part time indefinite or work on a time limited basis; and[~~employees of the Governor's Office of Economic Development whose positions are designated as executive/professional positions by the director of the office;~~]

(h) [~~employees of the Medical Education Council; and~~

~~(i)~~]educational interpreters and educators as defined by Section 53A-25b-102 who are employed by the Utah Schools for the Deaf and the Blind.

(2) The Executive Director, DHRM, may designate specific job titles, job and position identification numbers, schedule codes, and other administrative information for all employees exempted in R477-2-1 and R477-3-1 for identification and reporting purposes only. These employees are not to be considered classified employees.

R477-3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate.

(1) Job descriptions shall contain:

(a) job title;

(b) distinguishing characteristics;

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

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

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

R477-3-3. Assignment of Duties.

(1) Management may assign, modify, or remove any position task or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by agency management.

(2) Significant changes in the assigned duties may require a position classification review as described in R477-3-4.

R477-3-4. Position Classification Review.

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

(a) as part of a classification 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 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.

R477-3-5. Position Classification Grievances.

(1) An agency or a career service employee may grieve formal classification decisions regarding the classification of a position.

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

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

(2) DHRM shall follow the first level classification hearing service of process as follows:

(a) An employee filing a classification grievance shall submit a completed Position Classification Grievance form along with required information to the Executive Director, DHRM.

(i) If the classification form is incomplete, the employee is notified of the discrepancy via both certified and electronic mail within seven calendar days from DHRM's receipt of the grievance.

(A) The employee shall be given 14 calendar days, from the date the employee receives the electronic mail notice, to submit requested additional information.

(ii) If the classification form is complete, the employee is notified via both certified and electronic mail within seven calendar days that the grievance has been received.

(b) The DHRM employee who made the initial classification decision is notified of receipt of the grievance within seven calendar days and is provided a copy of the grievance.

(i) The DHRM employee is given 14 calendar days to review the initial decision and return the completed paperwork to the grievance panel chairperson.

(c) The chairperson has 14 calendar days from receipt of the completed paperwork to:

(i) contact assigned grievance panel members;

(ii) provide copies of all grievance materials to the panel members; and

(iii) to electronically notify the employee of possible hearing dates.

(d) The employee shall be given seven calendar days from the date the employee receives the electronic mail notice to respond with a selected hearing date.

(e) An employee may withdraw the grievance at any time.

(f) The grievance panel has 30 days from the date the employee's response is received to prepare findings and recommendations and present them to the Executive Director, DHRM. The Executive Director, DHRM, shall make the classification decision and notify the grievant.

R477-3-6. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, grievances, job descriptions, position classifications
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12

Human Resource Management, Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33603
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to clarify and comply with H.B. 17 and H.B. 140 (2010 General Session). The recruitment and selection process is simplified and articulated with greater clarity. Unnecessary language is removed. (DAR NOTE: H.B. 17 (2010) is found at Chapter 103, Laws of Utah 2010, and was effective 05/11/2010. H.B. 140 (2010) is found at Chapter 249, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-4-2(4), requirements for temporary appointments for career service exempt positions are outlined in greater detail. Section R477-4-4 is amended and reduced for simplification. Subsection R477-4-5(1)(i) is removed. Subsection R477-4-6(1)(c) is added to restore sick leave to rehired RIF'd employees. Section R477-4-7 is simplified. In Subsection R477-4-12(3)(c), increases and decreases are limited to 1/2% increments. Several edits are made to eliminate unnecessary language.

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

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.
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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.

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♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-1. Authorized Recruitment System.

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.[

~~(3) Only Schedule A appointments made from a hiring list under Subsection R477-4-9 may be considered for conversion to career service.~~]

([~~4~~]3) Appointments to fill an employee's position who is on approved leave [~~without pay~~]shall only be made temporarily.

([~~5~~]4) Appointments made on a [~~time-limited~~]temporary basis shall be career service exempt and:

(a) be Schedule [~~AI, AJ, or AL~~]IN, in which the employee:

(i) is hired to work part time indefinitely;

(ii) may not work more than 30 hours per week; and

(iii) shall have a temporary agreement signed by both the hiring official and the employee on an annual basis; or

(b) [~~have a time limited agreement signed by both the hiring official and the employee.~~]be Schedule TL, in which the employee:

(i) is hired to work on a time limited basis; and

(ii) shall have a temporary agreement signed by both the hiring official and the employee at least every three years.

(c) may, at the discretion of management, be offered benefits if working a minimum of 20 hours per week.

(d) if the required work hours of the position exceed the 30 hours per week maximum for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Only Schedule A, IN or TL appointments made from a hiring list under Subsection R477-4-8 may be considered for conversion to career service.

R477-4-3. Career Service Positions.

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

(a) DHRM business practices;

(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.

R477-4-4. [~~Order of~~]Recruitment and Selection for Career Service Positions.

(1) Prior to [~~implementing the steps for order of selection~~]initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment[~~or transfer~~] within an agency initiated by an employee's reasonable accommodation request[~~for the purposes of reasonable accommodation~~] under the [~~Americans with Disabilities Act~~]ADA;

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

(e) reassignment, transfer, or career mobility[~~, or other movement~~] of qualified employees to better utilize skills or assist management in meeting the organization's mission;[~~or~~]

(f) reclassification; or[~~:~~]

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) 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.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. [~~Appointing authorities shall~~]Management may make appointments according to the following order[~~of selection which applies to all vacant career service positions~~]:

(a) [~~First, agencies shall make appointments~~]from the [~~statewide~~]reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.[~~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, or conversions from schedule A to schedule B as authorized by Subsection R477-5-1(3).~~

~~(c) Third, agencies may make appointments~~]from a hiring list of qualified applicants for 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) opening and closing dates; and~~

~~(iv) a strategy for equal employment opportunity, if applicable.~~

~~(2) Recruitments for career service positions shall be posted for a minimum of seven calendar 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 under Subsection R477-4-4(1).~~]

R477-4-[6]5. Transfer and Reassignment.

(1) Positions may be filled by reassigning an employee without a reduction in the current actual wage except as provided in federal or state law.

(a) Prior to transfer or reassignment of an employee, the receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.[

~~(i) 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.~~]

(b) 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.

(c) 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.

(2) A reassignment or transfer may include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit.

R477-4-[~~7~~]6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(b) An employee rehired into a benefited position within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

(c) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I and Program II as accrued prior to the reduction in force.

([~~e~~]d) A rehired employee may be offered any salary within the salary range for the position.

R477-4-[8]7. Examinations.

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

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

(a) a [~~documented job analysis~~]detailed position record (DPR) based upon a current job or position analysis;

(b) an initial, [~~unbiased~~]impartial screening of the individual's qualifications;

(c) [~~security of examinations and ratings;~~

~~(d) timely notification of individuals seeking positions;~~

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

~~(f) unbiased~~]impartial evaluation and results; and

([~~g~~]d) reasonable accommodation for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

R477-4-[9]8. Hiring Lists.

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

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using the DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

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

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

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

([~~4~~]3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

([~~5~~]4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-[~~10~~]9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-[~~11~~]10. Internships[~~ and Cooperative Education~~].

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to [~~time limited,~~]temporary career service exempt positions.

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

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.[~~ However, a reduction in the number of positions in a certain class shall be treated as a reduction in force.~~]

R477-4-[~~13~~]12. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a [~~time limited~~]temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(c) Agencies may offer an employee on a career mobility assignment a salary increase or salary decrease in any amount in increments of 1/2%, provided the new salary is within the new salary range[~~of a maximum of 11% or the minimum of the range~~].

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-[~~15~~]13. Assimilation.

(1) An employee assimilated by the state from another career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4-[~~16~~]14. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
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.: 33604
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments were made in response to H.B. 17 (2010 General Session). (DAR NOTE: H.B. 17 (2010) is found at Chapter 103, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: In Section R477-5-1, language is clarified and the Alternative State Application Program provisions are added.

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 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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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 by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

(1) Only an employee who is [~~appoint~~]hired through a pre-approved [~~competitive~~]process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period prior to receiving career service status.

(3) A[~~n~~] career service exempt employee may only convert to career service status[~~ under the following conditions~~], in a position with an equal or lower salary range to the previous career service position held, when:

(a) [~~T~~]the employee previously held career service status with no break in service between exempt status and the previous career service position[~~.~~];

(b) [~~T~~]the employee was hired from a hiring list to a schedule A, TL or IN position, in the same job title to which they would convert, as prescribed by Subsection R477-4-[~~9~~]8[~~.~~]; or

(c) the employee was hired through the Alternative State Application Program (ASAP) and successfully completed a six month on the job examination period.

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 an opportunity to demonstrate competence [~~in the job~~]in a career service position. A[~~s 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 service 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% of the regular work schedule 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 career service position may be transferred, reassigned or promoted to another 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-[4]3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
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.: 33605
FILED: 04/30/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to comply with provisions of H.B. 140 (2010 General Session). Subsections are rearranged for clarity. (DAR NOTE: H.B. 140 (2010) is found at Chapter 249, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: In Section R477-6-1, language is added to define salary range and set increments for pay increases and decreases to 1/2%. Section R477-6-2 is rearranged. In Section R477-6-4, salary parameters are redefined, the term "step" is removed, "reclassification" is separated into its own subsection, and "productivity step adjustment" is discontinued. Subsection R477-6-6 is rewritten for simplicity. Unnecessary language is removed in various places and new terms replace others.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop and adopt pay plans for each position in classified service. Positions exempt from classified service are identified in Subsection R477-3-1(1).

(a) The General Pay Plan shall include salary ranges with established minimum and maximum rates.[~~Pay plans shall contain merit steps in increments of 2.75%.~~]

(b) A salary range includes every pay rate from minimum to maximum.

(c) Pay rate increases and decreases within salary ranges shall be in increments of 1/2%, except for legislatively approved salary adjustments and longevity.

R477-6-2. Allocation to the Pay Plans.

(1) Each job in classified service shall be assigned to a salary range[~~on the applicable pay plan~~].

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary ranges in the market; or

(b) a comparison of the state's benchmark job salary ranges to salary ranges for similar positions in the market through an annual compensation survey conducted by DHRM.

(i) [~~m~~]Market comparability salary range adjustment recommendations shall be included in the annual compensation plan and shall be submitted to the Governor no later than October 31 of each year.

(ii) [~~m~~]Market comparability salary range adjustments shall be legislatively approved.

(iii) [~~i~~]If market comparability adjustments are approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.[~~; or~~

~~(b) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary ranges in the market.~~]

(3) Each job exempted from classified service shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-3. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.[~~Hiring officials shall consult with DHRM before making appointment offers to individuals.~~]

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

R477-6-4. Salary.

(1) Merit increases. The following 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:

(i) Employee may not be [~~on a~~]in 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, which shall have been within the previous twelve months.

(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) [~~All other position schedules will be reviewed by DHRM in consultation with the Governor's Office.~~

~~(c)~~]Employees designated as schedule [~~AJ~~]AA, AQ, AU, IN, and TL are not eligible for merit[~~step~~] increases.

(c) All other position schedules will be reviewed by DHRM in consultation with the Governor's Office to determine if they are eligible for merit increases.

(2) Promotions[~~and Reclassifications~~].

(a) An employee promoted [~~or reclassified~~]to a position with a salary range maximum 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 position with a salary range exceeding the employee's current salary range maximum by two or more salary steps shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.~~]

(i) of at least 5%, and

(ii) any increase above 5% shall be in increments of 1/2% or up to the salary range maximum.

[~~(i)~~](b) 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~~]4).

[~~(ii)~~](c) 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)~~](d) To be eligible for a promotion, an employee shall[~~:~~

~~(i)~~]meet the 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 position 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) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a position with a salary range maximum exceeding the employee's current salary range maximum may receive a pay rate increase in increments of 1/2% or up to the salary range maximum.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4)

(c) An employee who remains in longevity status after a reclassification shall retain the same salary.

(d) An employee whose position is reclassified to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(4) Longevity.

(a) An employee shall receive a longevity increase of 2.75% 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~~]of 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~~]in 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~~]in longevity [~~step~~]shall only be eligible for an additional 2.75%[~~step~~]increase[~~s~~] every three years. To be eligible, an employee [~~must~~]shall receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee [~~on a~~]in longevity [~~step~~]who is reclassified to a position with a lower salary range shall retain the current actual wage.

(e) An employee [~~on a~~]in longevity [~~step~~]who is promoted or reclassified to a position with a higher salary range shall only receive a salary increase if the current actual wage is less than the [~~highest~~]salary [~~step~~]range maximum of the new [~~range~~]position. The salary increase shall be in increments of 1/2% or up to the range maximum of the new position.

(f) [~~Agency heads~~]Employees in Schedules AB, IN, or TL are not eligible for the longevity program.

([~~4~~]5) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, 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.

(c) An employee whose position is changed by administrative adjustment to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

([~~5~~]6) Reassignment.

An employee's current actual wage may not be lowered except when provided in federal or state law. Wage rate decreases shall be made in 1/2% increments or not less than the minimum salary range.

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

Management may decrease the current actual wage of an employee who transfers to another position. Wage rate decreases shall be made in 1/2% increments or not less than the minimum salary range.

([~~7~~]8) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage in 1/2% increments or not less than the minimum of the new position's salary range[~~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 management report 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% 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~~]an increase in 1/2% increments or up to the maximum of the salary range.

(i) The Executive Director, DHRM, may authorize limited exceptions to this subsection when administrative salary increases are requested for equity purposes.

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

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(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. Wage rate increases shall be made in 1/2% increments. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the salary range maximum [~~step of the range—~~]or [~~on a~~]in 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) The final salary may not be less than[~~An employee shall receive a one or more step decrease not to exceed~~] the minimum of the salary range.

(b) Wage rate decreases shall be made in 1/2% increments.

(c) 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 the employee[~~s~~] to include career mobility[~~:~~]**,** reasonable accommodation,[~~special agency conditions or problems,~~] or other unique situations or considerations in the agency.

([e]d) [~~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 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 that demonstrates 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 shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards 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~~]shall 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~~]incentivize 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.

R477-6-6. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working more than 40 hours per pay period.[~~(1) An eligible employee may enroll in medical, dental, vision, a flexible spending account, and retirement benefits online or complete a paper enrollment form. Agencies shall submit paper enrollment forms to Group Insurance or Utah Retirement Systems within three working days of the date entered on the enrollment form.~~]

(2) An eligible employee has 60 days from the hire date[~~shall elect~~] to enroll in medical, dental, vision, and a flexible spending account[~~ within 60 days of the hire date~~].

(a) An employee with previous medical coverage shall provide to the state's health care provider a certificate of creditable coverage which states dates of eligibility in order to have the preexisting waiting period reduced or waived.

(b) An employee who does not enroll within 60 days shall only be permitted to enroll during the annual open enrollment period for all state employees.

(3) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(4) An employee eligible for retirement benefits shall be automatically enrolled in the defined benefit plan and the defined contribution plan, as applicable. An enrollment form shall be required to establish beneficiaries and investment strategies and can be submitted at any time.

(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 AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative [~~base~~]salary increase [~~of one to three salary steps, as determined by the agency head~~]up to the maximum of the current salary range in 1/2% increments. An employee at the maximum of the current salary range or [~~on~~]in longevity shall receive, in lieu of the salary [~~step~~]adjustment, a one time bonus, [~~of 2.75%, 5.5% or 8.25% to be~~]as determined by the agency head or designee, not to exceed limits in Subsection R477-6-5(b);

(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 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 schedule AC, 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 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.

R477-6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

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

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

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

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

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

R477-6-9. Severance Benefit.

(1) A benefits eligible career service exempt employee on schedule AB, AD, 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 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 dismissed for cause.

(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.

R477-6-10. Human Resource Transactions.

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

KEY: salaries, employee benefit plans, insurance, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
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.: 33606
FILED: 04/30/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to simplify and reduce confusion. Amendments are made to comply with S.B. 43 (2010 General Session). (DAR NOTE: S.B. 43 (2010) is found at Chapter 264, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: Section R477-7-1 is simplified. Subsection R477-7-1(7)(c) is expanded in more detail. Subsection R477-7-4(4) adds the ability for employees to use any combination of Program I and II sick leave. Some terms are replaced and subsections rewritten for clarity and consistency with other rules. Sections R477-7-5 and R477-7-6 have language added to address use of converted sick leave and disposition of such for rehired retirees. Redundant and unnecessary language is removed from Subsection R477-7-7(2). Language in Sections R477-7-13 and R477-7-15 places more exact parameters for using unpaid medical leave and FMLA. Language in Sections R477-7-13, R477-7-16, and R477-7-117 places more exact parameters for using workers' compensation and long-term disability.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-14.2 and Section 67-19-6 and Section67-19-14.4

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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 by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

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

(1) [~~An employee in a position which normally requires working 40 hours or more per pay period shall be eligible for all leave benefits, unless the employee is in a position specifically designated as ineligible for leave benefits. An employee in a position which normally requires working less than 40 hours per pay period is ineligible for leave benefits.~~]An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working more than 40 hours per pay period.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, converted sick, compensatory, excess or holiday leave before accrued.

(5) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.

(6) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(7) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:[-]

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period. [~~No leave on leave may accrue or be paid on the cashed out leave.~~

~~(ii) Only leave without pay or administrative leave may be used after the last day worked.~~]

([~~6~~]8) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Veterans' Day -- November 11

(i) Thanksgiving Day -- fourth Thursday of November

(j) Christmas Day -- December 25

(k) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed nine hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee 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 maximum annual leave accrual rate shall be granted to an 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.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first ten hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management[~~Sick leave~~] may [~~be~~]grant[~~ed~~] sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or[~~temporary~~] disability of the employee, a spouse, children or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I and Program II sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

([~~5~~]6) Any application for a grant of sick leave to cover an absence that exceeds [~~four successive~~]three consecutive working days shall be supported by administratively acceptable evidence.

([~~6~~]7) 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.

([~~7~~]8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I and Program II as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program II sick leave.

([~~b~~]c) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

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 Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall be Program II converted sick leave hours.

(2) To be eligible, an employee [~~must~~]shall have accrued a total of 144 hours or more of sick leave in Program I and 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 Program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in Program I and 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 Program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(5) Upon retirement, 25% 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 Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(c) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6(4)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(7) Retired employees who reemploy with the state in a benefitted position will have a new benefit calculated on any new Program II converted sick leave hours accrued, upon subsequent retirement, for the new period of employment.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued after January 1, 2006 shall be 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~~]shall 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) [~~two years if the employee retires during calendar year 2009;~~

~~(B)~~]one year if the employee retires during calendar year 2010; or

([~~C~~]B) 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) 25% 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 Program II shall be placed in the 401(k) account before hours from 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) [~~192 hours if the employee retires during calendar year 2009;~~

~~(B)~~]96 hours if the employee retires during calendar year 2010; or

([~~C~~]B) zero hours if the employee retires after calendar year 2010.

([~~D~~]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 the employee 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 becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(iii) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is 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 under Section 67-19-14.3.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(4) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% 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.

(c) Retired employees who reemploy with the state in a benefited position will have a new benefit calculated on any new Program II sick leave hours accrued, upon subsequent retirement, for the new period of employment.

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 one day per occurrence;

(ii) administrative leave in excess of one day 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~~]shall:

(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, under Subsection R477-7-7(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~~]shall 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 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 unit where the salary is recorded.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

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 120 hours each calendar year, including travel time, under Section 39-3-1.

(1) An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(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 the employee 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.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee [~~must~~]shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the American Red Cross;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide for the American Red Cross; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management for approval of a leave of absence without pay.

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(b) The employee shall be entitled to previously accrued annual and sick leave.

(c) 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.

(2) Nonmedical Reasons

(a) Approval may be granted for continuous leave for up to six months from the last day worked in the employee's regular position. Exceptions may be granted by the agency head.

([~~e~~]b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist.

([~~d~~]c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

([~~e~~]d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(3) Medical Reasons

(a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted [~~block, reduced schedule, or intermittent~~]leave without pay for medical reasons not to exceed six months cumulative from the first day of absence or inability to perform the employee's regular position.

(i) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(b) [~~Medical leave without pay may be granted for no more than six months from the last day worked in the employee's regular position. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled. Exceptions may be granted by the agency head.~~]After six months cumulative from the first day of absence or inability to perform the regular position, the employee shall be separated from employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(c) Except as otherwise provided under the Family Medical Leave Act, 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) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entitrely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is [~~entitled~~]allowed up to 12 work 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~~]allowed up to 26 work weeks of family and medical leave during a 12 month period 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.

(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 provided the employee pays the employee share of the health insurance premium.

(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.

(5) To be eligible for family and medical leave, the employee [~~must~~]shall:

(a) be employed by the state for at least 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.

(6) To request 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 practicable in emergencies.

(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.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(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.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) 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.

(a) 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.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Employees on FMLA may not work a second job without written consent of the agency head.

(14) Medical records created for purposes of FMLA and the Americans with Disabilities Act [~~must~~]shall 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 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 the:

(i) employee is declared medically stable by licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iii) employee has been absent from work for six months;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) 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) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(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.

(a) If an employee has applied for LTD and is determined eligible, and the employee elects to continue health insurance coverage, the employee shall be responsible to pay health insurance pursuant to R477-7-17(1)(b)(i).

(4) If the employee is able to return to work [~~within six months 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 in the regular position after[~~within~~] six months of cumulative from the first day of absence or inability to perform in the regular position[~~the last day worked in the employee's regular position~~], or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(6) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(7) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

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 six months of medical leave without pay~~]may be granted up to six months of leave cumulative from the first day of absence or inability to perform the regular position as the result of health conditions, unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position. Exceptions to the six months may be granted by the agency head.

(a) For LTD qualifying purposes, t[~~T~~]he medical leave begins on the day after the last day the employee worked in the employee's regular position. LTD requires a waiting period before benefit payments begin.

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked or the last day of FMLA leave.

(i) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on 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. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(c) 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, excess hours, and compensatory hours earned by FLSA non-exempt employees[~~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 six months after the last day worked in the employee's regular position,~~]Upon return to work from an approved leave of absence, 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 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 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~~]long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work[~~ within six months of the last day worked in the employee's regular position~~], 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 six months a~~]After six months of cumulative absence from or inability to perform[~~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. Exceptions may be granted by the agency head.

(4) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

R477-7-18. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) An employee may not receive donated leave until all individually accrued leave is used.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(5) Employees [~~on FMLA~~]using donated leave may not work a second job without written consent of the agency head.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations
Date of Enactment or Last Substantive Amendment: [~~February 8,~~]2010
Notice of Continuation: June 29, 2007
Authorizing, and Implemented or Interpreted Law: 34-43-103; [~~49-9-203;~~]63G-1-301; 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.: 33607
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language is added to clarify provisions. Nonsubstantive changes replace less effective terms.

SUMMARY OF THE RULE OR CHANGE: Language is added and proper terms placed throughout the rule. In Section R477-8-9, a reference is corrected.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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 by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Work Period.

(1) The state's standard work week begins Saturday and ends the following Friday. Agencies may implement alternative work schedules from among those approved by the Executive Director, DHRM.

(2) State offices are typically open Monday through Thursday from 7 a.m. to 6 p.m. Agencies may adopt extended business hours to enhance service to the public.

(3) Agency management shall establish work schedules and may approve a flexible starting and [~~quitt~~]ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated[~~- 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.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met; and

(c) not allow telecommuting employees to violate overtime rules.

R477-8-3. Lunch and Break Periods.

(1) Management may require a minimum of 30 minutes noncompensated lunch period.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(3) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

R477-8-4. 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. Further appeals [~~must~~]may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not 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 may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks 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 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 establish the date for the agency at 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) 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 may not be compensated with actual payment. Schedule AB employees 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~~]shall 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% 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) Employees shall 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 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) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record shall be disciplined.

(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; or

(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) On-call status shall be designated by a supervisor, either verbally or in writing, for a specified time period. Carrying a 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 the official time record in order to be paid.

(d) Stand-by time: An employee restricted to stand-by at a specified location ready for work [~~must~~]shall be paid full-time or overtime, as appropriate. An employee [~~must~~]shall 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~~]shall 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 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;

(iv) upon request of the employee and approval by the agency head; or

(v) upon assignment from one agency to another.

R477-8-5. 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 under Subsection R477-9-2(1).

R477-8-6. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-7. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-8. Temporary Transitional Assignment.

(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 health restrictions.

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-9. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03[~~and Department of Administrative Services, Division of Finance Policy 05-03.03~~], or reimburses commuting expenses up to the cost of a move.

R477-8-10. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-11. 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.

R477-8-12. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
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.: 33608
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Several terms and phrases are rewritten for clarity. Some language is removed to prevent confusion. Improper terms are corrected.

SUMMARY OF THE RULE OR CHANGE: Terms and phrases are replaced throughout the rule. Redundancies and unnecessary language is removed. In Subsection R477-9-2(1)(e)(i), the grievable language is removed to remove confusion since the issue in discussion is not formally grievable to the Career Service Review Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-7-2 and Section 67-19-19 and Section 67-19-6

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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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 by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

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, time, 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 Section 63G-7-2 of the Utah Governmental Immunity Act.

(4) An employee 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 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 63G-7-202(3)(c)(ii) 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.

R477-9-2. Outside Employment.

(1) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment may not interfere with an employee's performance.

(b) Outside employment [~~must~~]may not conflict with the interests of the agency nor the State of Utah.

(c) Outside employment [~~must~~]may not give reason for criticism nor suspicion of conflicting interests or duties.

(d) An employee shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.

(e) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.[

~~(i) An employee may grieve this decision.~~]

([~~ii~~]f) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities may not interfere with an employee's performance.[

~~(b) Outside activities must not conflict with~~]the interests of the agency nor the State of Utah.

([e]b) Outside activities [~~must~~]may not give reasons for criticism nor suspicion of conflicting interests or duties.

(2) An employee may not use a state position; [~~or~~]any influence, power, authority or confidential information received in that position[~~,~~]; nor state time, equipment, property, or supplies for private gain.

(3) An employee 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, nor accept other compensation that might be intended to influence or reward the employee in the performance of official business.

(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 the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(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~~]may 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 the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

(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 times when monetary compensation is received for service in political office. An employee may not use annual leave while serving in a political office.

(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.

(4) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions may not be based on partisan political activity.

R477-9-5. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions [~~must~~]shall be met before withholding of salary may occur:

(i) The debt [~~must~~]shall be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee [~~must~~]shall know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.

(iii) An employee [~~must~~]shall be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-6. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-7. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to 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, 2009~~]2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 63G-7-2; 67-19-6; 67-19-19

Human Resource Management, Administration
R477-10
Employee Development

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33609
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments attempt to place greater distinguishing characteristics between discipline and the former term "corrective action" by replacing terminology. Amendments also establish Utah Performance Management system as a statewide requirement. Employee training and development is articulated in greater detail to clarify requirements and roles of the Department of Human Resource Management (DHRM) and agencies.

SUMMARY OF THE RULE OR CHANGE: Section R477-10-1 adds requirements for use of the Utah Performance Management system. Subsection R477-10-1(1) simplifies language concerning performance management. Section R477-10-2 replaces the term "corrective action" with "performance improvement" in the title and throughout the body. Written warnings are also placed in this section. Sections R477-10-3 and R477-10-4 are combined into one and given more clarifying detail.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-12.4 and Section 67-19-6

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.
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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.

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or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations[~~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 the use of UPM and 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 p~~]Performance management systems shall satisfy the following criteria:

(a) Agency management shall select an overall performance rating scale.

(b) Performance standards and expectations for each employee shall be specifically written in a performance plan.

([~~b~~]c) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and [~~conduct~~]behavior outlined in the performance plan.

([e]d) [~~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)~~]An employee shall have the right to include written comments pertaining to the evaluation with the employee's performance evaluation.[

~~(e) Agency management shall select a performance management rating system.~~]

(2) Each fiscal year a state employee shall receive a performance evaluation.

(a) A probationary employee shall receive an additional performance evaluation at the end of the probationary period.[

~~(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~~]Performance Improvement.

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~~]place an employee on an appropriate, and documented [~~corrective action~~]performance improvement plan in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee and determine appropriate [~~corrective~~]action.

(2) An employee shall have the right to submit written comment to accompany the [~~corrective action~~]performance improvement plan.

(3) [~~Corrective action~~]Performance improvement 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~~]performance improvement plan.

(4) [~~Corrective action~~]Performance improvement 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~~]a performance improvement plan, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

(6) A written warning may also be used as an appropriate form of performance improvement as determined by the supervisor.

R477-10-3. Employee Development and Training.

(1) Agencies shall provide training to their employees on the prevention of workplace harassment.

(a) The curriculum shall be approved by DHRM and the Division of Risk Management.

(b) After initial training all agencies shall provide updated or refresher training to employees every two years.

(c) Training shall be developed and provided by qualified individuals.

(d) Agencies shall keep records of the training, including who provided the training, who attended the training and when they attended it.

(2) Agency management may establish [~~a~~]programs for training and staff development [~~consistent with these rules.~~]that[

~~(1) All agency sponsored training~~] shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.

(5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-4. [~~Liability Prevention Training.~~

~~Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM and the Division of Risk Management. Topics shall include: prevention of workplace harassment, discrimination and violence.~~

~~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 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 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.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
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.: 33610
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language is added to add more detail and clarification to causes for discipline and to establish the requirement for the Department of Human Resource Management (DHRM) to consult with the Attorney General's Office before imposing discipline, in accordance with provisions in H.B. 140 (2010 General Session). (DAR NOTE: H.B. 140 (2010) is found at Chapter 249, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-11-1(1), language is added to add more detail and clarification to causes for discipline. Subsection R477-11-1(2) is added requiring DHRM to consult with the Attorney General's Office before imposing grievable discipline.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
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THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

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, or 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[~~-~~];

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee

(a) DHRM shall consult with the Office of the Attorney General prior to agency management imposing discipline on an employee that is grievable to the Career Service Review Office.

([~~2~~]3) 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~~]shall 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~~]4) 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 actions:

(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) An employee's current actual wage may be lowered within the current salary range, as determined by the agency head or designee.

(d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with Subsection 67-19-18(5) and Section R477-11-2.

([~~4~~]5) 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, 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~~]6) 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~~]7) Disciplinary actions are subject to the grievance and appeals procedure 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 under 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~~]shall 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 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 Section 63G-2-3.

(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.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(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, 2009~~]2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

Human Resource Management, Administration
R477-12
Separations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33611
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Various terms are changed to clarify intent.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-12-1(1), "ten working days" is changed to "two weeks" to account for varying work week schedules (i.e., 4 - 10s). Some unnecessary terms are removed, others replaced by more clear or current terms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-17 and Section 67-19-18 and Section 67-19-6

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: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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 by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

A career service employee may resign or retire by giving written or verbal notice to the [~~immediate~~]supervisor or an appropriate representative of management in the work unit.

(1) Agency management [~~may~~]shall accept an employee's notice of resignation or retirement without prejudice when received at least [~~ten working days~~]two weeks before its effective date.

(2) After [~~submitting~~]giving a notice of resignation or retirement, an employee may withdraw it on the next working day by notifying the [~~immediate~~]supervisor or an appropriate representative of management in the work unit.

(a) If the withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.

(b) After the close of the next working day following submission, withdrawal of a resignation or retirement may occur only with the consent of agency management.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned [~~his~~]the position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal to the agency head within five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(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 by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

(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 reassignment, transfer and relocation to vacant positions for which the employee qualifies;

(d) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

(e) [~~a list of all affected employees showing the retention points for each employee~~]When more than one employee is affected, employees shall be listed in order of retention points.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency. The following job-related criteria found in work records may be considered:

(i) quality of work;

(ii) productivity;

(iii) skills demonstrated through work performance; or

(iv) other factors that relate to employee performance or conduct.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service tenure with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

(a) [~~time limited~~]temporary employees in schedule [~~AI, AJ, or AL~~]A, IN or TL positions;

(b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is separated due to a RIF 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) An employee notified of separation due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review [~~Board~~]Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-7.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A 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 under these rules, shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) The RIF'd individual shall request to receive preferential consideration on any career service position for which the individual applies, subject to DHRM verification. In order to receive preferential consideration on a career service position, a RIF'd individual shall express a desire to receive it on each position for which the candidate applies.

(11) Prior to termination and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-6.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to 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, 2009~~]2010
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
R477-14
Substance Abuse and Drug-Free Workplace

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33612
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Clarifying language is added and confusing language is removed.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-14-1(2) specifies "impairment". In Subsection R477-14-1(7), language is added to exempt employees already in highly specified positions from preemployment drug testing. In Subsection R477-14-1(10), the .04 cutoff level is stated for safety sensitive employees. In Subsection R477-14-2(9), wording is removed specifying only violations "occurring in the workplace."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-34 and Section 67-19-35 and Section 67-19-38 and Section 67-19-6

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: This rule only affects the executive branch of state government and will have no impact on small businesses.

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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.

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SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation[~~al~~] Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be impaired by[~~or use~~] any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Employees are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;
(b) critical incident;
(c) post accident;
(d) return to duty; and
(e) follow up.

(7) Final applicants for highly sensitive positions, or employees who are final candidates for, are transferred to, or are assigned the duties of a highly sensitive position, are subject to preemployment drug testing at agency discretion except as required by law.

(8) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(9) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(10) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(11) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Manual.

(12) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, [~~must~~]shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to [~~corrective action or~~] discipline.

(14) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

(15) The agency human resource field office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00;

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee [~~must~~]shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-3.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted for a violation [~~occurring in the workplace,~~]under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-[4]3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
Notice of Continuation: December 6, 2006
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; 67-19-35; 63G-2-3; 67-19-38

Human Resource Management, Administration
R477-15
Workplace Harassment Prevention Policy and Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33613
FILED: 04/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary terms are removed in several places. The terms "prevention" and "retaliation" are placed to accentuate and clarify provisions.

SUMMARY OF THE RULE OR CHANGE: "Prevention" is added to the title of the rule. Unnecessary terms are removed in several places. The term "retaliation" is inserted in several places to accentuate a current leading category of

harassment. In Subsection R477-15-4(2)(b), a reference to records requirements is inserted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Gov.'s Exec. Order on Prohibiting Unlawful Harassment and Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

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.
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♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 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.

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-15. Workplace Harassment Prevention Policy and Procedure.
R477-15-1. Purpose.

It is the State of Utah's policy to provide all employees a working environment that is free from[~~discrimination and~~] harassment based on race, religion, national origin, color, gender, age, disability, or protected activity or class under state and federal law.

R477-15-2. Policy.

(1) Workplace harassment includes the following subtypes:

(a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) An employee may be subject to discipline for workplace harassment, 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.

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.

R477-15-4. Complaint Procedure.

Management shall permit individuals affected by workplace harassment, retaliation, or both 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 workplace harassment, retaliation, or both 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 workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with [~~confidentiality guidelines~~]investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

R477-15-5. Investigative Procedure.

(1) [~~Preliminary reviews and f~~]Formal investigations shall be conducted by qualified individuals based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate action under Rule R477-11.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the findings shall be documented and the appropriate parties notified.

R477-15-6. Records.

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(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.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

R477-15-7. Training.

(1) Agencies shall comply with the Workplace Harassment Prevention Training Standards 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 1, 2009~~]2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3; Governor's Executive Order on Prohibiting Unlawful Harassment, December 13, 2006

Insurance, Administration
R590-155
Disclosure of Life and Health Guaranty Association Limitations

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33591
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being updated to correct the address of the association and increase the amount for annuities along with other housekeeping revisions.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include: 1) the change in the title of the rule; 2) correcting the address of the association; 3) increasing the amount for annuities; 4) standardizing the notice to conform with the National Association of Insurance Commissioner's (NAIC) template; 5) transferring the notice from the body of the rule to an attachment; 6) standardizing the Enforcement section; 7) moving the severability section to the end of the rule; and 8) adding a Penalties section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-28-119

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Licensed health and life insurers will be required to file their revised guarantee notices with the department, which will increase the department's workload, but not to the extent that a full or part time person will need to be hired. These filings will not create a change in the department or state's revenues since insurers pay a set fee once a year.
♦ LOCAL GOVERNMENTS: The changes to this rule will not affect local governments since the rule deals solely with the relationship of the department with its licensees.
♦ SMALL BUSINESSES: This rule and its changes should have no effect on small businesses. The rule affects

insurance companies licensed to do business in Utah. All insurers would be considered large insurers.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Life and Health insurers will need to take the revised notice attached to this rule and make a few changes to it to personalize it. If they keep hard copies of the notice on hand they will need to replace it which would create a minor expense for them. The form would then need to be filed with the department but this is done electronically resulting in no mailing costs and no additional filing fee over that paid when the company renews its license with the department. As a result, there should be no pass along cost to their insureds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs involved in the changes to this rule. Filing fees are no longer charged for individual filings. They are paid at the time of the license is issued or renewed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/01/2010 03:00 PM, State Office Bldg, 450 N State St, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-155. [~~Disclosure of Life and Health Guaranty Association Limitations~~]Utah Life and Health Insurance Guaranty Association Summary Document.
R590-155-1. Authority.
This rule is promulgated pursuant to:
(1) Subsection 31A-2-201(3)(a), in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title; and[~~ pursuant to the specific authority of~~]
(2) Subsection 31A-28-119[~~(4)~~], to provide guidelines [~~to enable insurers to comply with the requirement to disclose to insureds the extent that contractual guarantees are not covered or have limited coverage by~~]for the Utah Life and Health Insurance Guaranty Association summary and disclaimer document.

R590-155-2. Purpose and Scope.
[~~A~~]1. The purpose of this rule is to specify the form and content of the summary and disclaimer document for insurers to disclose to [~~insureds~~]policy or contract holders the extent that contractual guarantees are not covered or have limited coverage by the Utah Life and Health Insurance Guaranty Association as required by Section 31A-28-119.
[~~B~~]2. The rule shall apply to all insurance transactions in this state involving [~~direct~~]life and health insurance policies and annuity contracts as specified in Subsection 31A-28-103(2).

R590-155-3. Rule.
[~~A~~]1. An insurer authorized to do business in this state, which is subject to the Utah Life and Health Insurance Guaranty Association Act, shall disclose to its policy or contract holders that its contractual guarantees may not be covered by the Utah Life and Health Insurance Guaranty Association.
[~~B~~]2. For the purpose of this rule, the [~~statutory~~]term "policy or contract holders" shall also mean insureds or certificate holders of group policies.
[~~C~~]3. Disclosure shall be made in writing using the [~~Utah Insurance Department summary document~~]text [~~entitled "Utah Life and Health Insurance Guaranty Association, Notice to Policyholders," as follows:~~]in the attachment to this Rule.

[~~TABLE~~

~~NOTICE TO POLICYHOLDERS~~
~~(Boldface Type)~~
~~Insurance companies licensed to sell life insurance, health insurance, or annuities in the State of Utah are required by law to be members of an organization called the Utah Life and Health Insurance Guaranty Association ("ULHIGA"). If an insurance company that is licensed to sell insurance in Utah becomes insolvent (bankrupt), and is unable to pay claims to its policyholders, the law requires ULHIGA to pay some of the insurance company's claims. The purpose of this notice is to briefly describe some of the benefits and limitations provided to Utah insureds by ULHIGA.~~

~~PEOPLE ENTITLED TO COVERAGE~~
~~(Boldface Type)~~
~~You must be a Utah resident~~
~~You must have insurance coverage under an individual or group policy.~~

~~POLICIES COVERED~~
~~(Boldface Type)~~
~~ULHIGA provides coverage for certain life, health and annuity insurance policies.~~

~~EXCLUSIONS AND LIMITATIONS~~
~~(Boldface Type)~~
~~Several kinds of insurance policies are specifically excluded from coverage. There are also a number of limitations to coverage. The following are not covered by ULHIGA:~~
~~Coverage through an HMO~~
~~Coverage by insurance companies not licensed in Utah.~~

~~Self-funded and self-insured coverage provided by an employer that is only administered by an insurance company.~~
~~Policies protected by another state's guaranty association.~~
~~Policies where the insurance company does not guarantee the benefits.~~
~~Policies where the policyholder bears the risk under the policy.~~
~~Re-insurance contracts.~~
~~Annuity policies that are not issued to and owned by an individual, unless the annuity policy is issued to a pension benefit plan that is covered.~~
~~Policies issued to pension benefit plans protected by the Federal Pension Benefit Guaranty Corporation.~~
~~Policies issued to entities that are not members of ULHIGA, including health plans, fraternal benefit societies, state pooling plans and mutual assessment companies.~~

~~LIMITS ON AMOUNT OF COVERAGE~~
~~(Boldface Type)~~
~~Caps are placed on the amount ULHIGA will pay. These caps apply even if you are insured by more than one policy issued by the insolvent company. The maximum ULHIGA will pay is the amount of your coverage or $500,000 -- whichever is lower. Other caps also apply:~~
~~$200,000 in net cash surrender values.~~
~~$500,000 in life insurance death benefits (including cash surrender values).~~
~~$500,000 in health insurance benefits.~~
~~$200,000 in annuity benefits -- if the annuity is issued to and owned by an individual or the annuity is issued to a pension plan covering government employees.~~
~~$5,000,000 in annuity benefits to the contract holder of annuities issued to pension plans covered by the law. (Other limitations apply).~~
~~Interest rates on some policies may be adjusted downward.~~

~~DISCLAIMER~~
~~(Boldface Type~~
~~to, but not to include, the~~
~~two addresses at the end.)~~
~~PLEASE READ CAREFULLY:~~
~~COVERAGE FROM ULHIGA MAY BE UNAVAILABLE UNDER THIS POLICY. OR, IF AVAILABLE, IT MAY BE SUBJECT TO SUBSTANTIAL LIMITATIONS OR EXCLUSIONS. THE DESCRIPTION OF COVERAGES CONTAINED IN THIS DOCUMENT IS AN OVERVIEW. IT IS NOT A COMPLETE DESCRIPTION. YOU CANNOT RELY ON THIS DOCUMENT AS A DESCRIPTION OF COVERAGE. FOR A COMPLETE DESCRIPTION OF COVERAGE, CONSULT THE UTAH CODE, TITLE 31A, CHAPTER 28.~~
~~COVERAGE IS CONDITIONED ON CONTINUED RESIDENCY IN THE STATE OF UTAH.~~
~~THE PROTECTION THAT MAY BE PROVIDED BY ULHIGA IS NOT A SUBSTITUTE FOR CONSUMERS' CARE IN SELECTING AN INSURANCE COMPANY THAT IS WELL-MANAGED AND FINANCIALLY STABLE.~~
~~INSURANCE COMPANIES AND INSURANCE AGENTS ARE REQUIRED BY LAW TO GIVE YOU THIS NOTICE. THE LAW DOES, HOWEVER, PROHIBIT THEM FROM USING THE EXISTENCE OF ULHIGA AS AN INDUCEMENT TO SELL YOU INSURANCE.~~
~~THE ADDRESS OF ULHIGA, AND THE INSURANCE DEPARTMENT ARE PROVIDED BELOW.~~
~~Utah Life and Health Insurance Guaranty Association, 955 E. Pioneer Rd., Draper, Utah 84020~~
~~Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114~~]

[~~D~~]4. Disclosure shall be given [~~by~~]before or at the time of delivery of the policy, contract, or certificate. The summary and disclaimer document shall also be available upon request by a policy or contract holder.

[~~E. As provided under Subsection 31A-21-201(3), each~~]5. Each insurer shall [~~file~~]submit a copy of the [~~form~~]summary and disclaimer document to the commissioner for approval.

R590-155-4. [~~Severability.~~

~~If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provisions to other persons or circumstances shall not be affected.~~

~~R590-155-5. Compliance~~|Enforcement Date.

[~~This rule is in effect on the date stated in the Notice of Effective Date form relating to this rule that the department files with the Division of Administrative Rules (the "effective date". The effective date will follow a period of 45 days during which interested parties will have time to prepare to be in compliance with this rule. It will also be the date on which the department will begin enforcing this rule. The Notice of Effective Date form is published in the Utah State Bulletin, a publication of the Division of Administrative Rules. The Utah State Bulletin is found at the website, www.rules.state.ut.us. In addition, the effective date may be found at the department's website, www.insurance.state.ut.us, by clicking on "Industry Resources" and then "Rules" and scrolling down to the appropriate reference to the rule.~~]The commissioner will begin enforcing this rule 45 days from the effective date of this rule.

R590-155-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-155-6. Severability.

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provisions to other persons or circumstances shall not be affected.

KEY: insurance
Date of Enactment or Last Substantive Amendment: [~~August 20, 2001~~|2010
Notice of Continuation: December 17, 2007
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-28-119

Public Safety, Fire Marshal
R710-9
Rules Pursuant to the Utah Fire Prevention Law

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33575
FILED: 04/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2010 session of the Utah State Legislature, H.B. 308 was sponsored and passed by the legislature adopting the 2009 edition of the International Fire Code and a number of amendments and additions to the fire code. The newly adopted statute adopting the state fire code by the legislature rather than the Utah Fire Prevention Board by administrative rule, will go into effect on 07/01/2010. To maintain the proper transition of authority, the administrative rule is proposed to be amended to delete all portions of the rule that referenced the adoption of the fire code, adoption of incorporated references, and all amendments and additions to the currently adopted 2006 International Fire Code. (DAR NOTE: H.B. 308 (2010) is found at Chapter 335, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: A summary of the proposed rule amendments are as follows: 1) in Section R710-9-1, it is proposed to eliminate the adoption of the 2006 International Fire Code and nine other standards that were adopted by incorporated reference; 2) in Section R710-9-2, several definitions that will no longer be applicable are proposed to be eliminated; and 3) in Section R710-9-6, the entire amendments and additions section amending the 2006 International Fire Code is proposed to be eliminated from the rule as it will now be in the adopted statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no aggregate anticipated cost or savings to the state budget because this proposed rule amendment is eliminating no longer needed sections of the administrative rule that will now be adopted by statute.
♦ LOCAL GOVERNMENTS: There is no aggregate anticipated cost or savings to local government because this proposed rule amendment is eliminating no longer needed sections of the administrative rule that will now be adopted by statute.
♦ SMALL BUSINESSES: There is no aggregate anticipated cost or savings to small businesses because this proposed rule amendment is eliminating no longer needed sections of the administrative rule that will now be adopted by statute.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no aggregate anticipated cost or savings to other persons because this proposed rule amendment is removing portions of an administrative rule that will no longer be in effect after 07/01/2010, due to the adoption of the state fire code statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons due to this proposed administrative rule amendment because this proposed rule amendment removes the adoption of the 2006 International Fire Code, adopted incorporated references, and any amendments and additions that were made to the currently adopted fire standard.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: During the 2009 and 2010 legislative sessions, the Legislature by statute removed the adoption of the state fire code from the authority of the Utah Fire Prevention Board, and made it the responsibility of the state legislature. There is no fiscal impact to businesses for the enactment of these proposed rule amendments because they do not affect businesses in any way.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2010

AUTHORIZED BY: Ron Morris , Utah State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.
R710-9-1. Title, Authority, and Adoption of Codes.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, [~~establishing amendments and additions to the adopted codes,~~]establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.[

~~1.4 There is adopted as part of these rules the following code which is incorporated by reference:~~

~~1.4.1 International Fire Code (IFC), 2006 edition, excluding appendices, as promulgated by the International Code Council, Inc., except as amended by provisions listed in R710-9-6, et seq.~~

~~1.5 There is further adopted as part of these rules the following codes which are also incorporated by reference and~~

~~supercede the adopted standards listed in the International Fire Code, 2006 edition, Chapter 45, Referenced Standards, as follows:~~

~~1.5.1 National Fire Protection Association (NFPA), NFPA 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.~~

~~1.5.2 National Fire Protection Association (NFPA), NFPA 13, Standard for Installation of Sprinkler Systems, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.~~

~~1.5.3 National Fire Protection Association (NFPA), NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.~~

~~1.5.4 National Fire Protection Association (NFPA), NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.~~

~~1.5.5 National Fire Protection Association (NFPA), NFPA 70, National Electric Code, 2008 edition, as adopted by the Uniform Building Standards Act, Title 58. Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code R156-56-701. Wherever there is a section, figure or table in the International Fire Code (IFC) that references "ICC Electrical Code", that reference shall be replaced with "National Electric Code".~~

~~1.5.6 National Fire Protection Association (NFPA), NFPA 72, National Fire Alarm Code, 2007 edition, except as amended in provisions listed in R710-9-6, et seq.~~

~~1.5.7 National Fire Protection Association (NFPA), NFPA 101, Life Safety Code, 2006 edition, except as amended in provisions listed in R710-9-6, et seq. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".~~

~~1.5.8 National Fire Protection Association (NFPA), NFPA 160, Standard for Flame Effects Before an Audience, 2006 edition, except as amended by provisions listed in R710-9-6, et seq.~~

~~1.6 National Fire Protection Association (NFPA), NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2008 edition, except as amended by provisions listed in R710-9-6, et seq.~~]

R710-9-2. Definitions.

[~~2.1 "Appreciable Depth" means a depth greater than 1/4 inch.~~

~~]~~2.[~~2~~]1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.[~~3~~]2 "Board" means Utah Fire Prevention Board.

2.[~~4~~]3 "Division" means State Fire Marshal.

[~~2.5 "ICC" means International Code Council, Inc.~~

~~]~~2.[~~6~~]4 "IFC" means International Fire Code.

[~~2.7 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.~~

~~]~~2.[~~8~~]5 "LFA" means Local Fire Authority.

[~~2.9 "NFPA" means National Fire Protection Association.~~

~~2.10 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.~~

~~]~~2.[~~11~~]6 "SFM" means State Fire Marshal or authorized deputy.

2.[~~12~~]7 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.[~~13~~]8 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Conduct of Board Members and Board Meetings.

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for

presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

[R710-9-6. Amendments and Additions.

~~The following amendments and additions are hereby adopted by the Board for application statewide:~~

~~6.1 International Fire Code - Administration~~

~~6.1.1 IFC, Chapter 1, Section 105.6.16 is amended to add the following section: 11. The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.~~

~~6.1.2 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".~~

~~6.2 International Fire Code - Definitions~~

~~6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".~~

~~6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: On line ten add "Type 1" in front of the words "Assisted living facilities".~~

~~6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line four delete the word "five" and replace it with the word "three". On line eleven after the words "Detoxification facilities" delete the rest of the section, and add the following: "Ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and Type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.~~

~~6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".~~

~~6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.~~

~~6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.~~

~~6.3 International Fire Code - General Precautions Against Fire~~

~~6.3.1 IFC, Chapter 3, Section 304.1.2 is amended as follows: Delete the current line six and add the following in it's place: "the Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance."~~

~~6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.~~

~~6.3.3 IFC, Chapter 3, Section 311.5 is amended as follows: On line two delete the word "shall" and replace it with the word "may".~~

~~6.3.4 IFC, Chapter 3, Section 315.2.1 is amended to add the following: Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard.~~

~~6.4 International Fire Code - Emergency Planning and Preparedness~~

~~6.4.1 IFC, Chapter 4, Section 404.2(7) is amended as follows: After the word "buildings" add "to include sororities and fraternity houses".~~

~~6.5 International Fire Code - Building Services and Systems~~

~~6.5.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator, one key for lobby control, and any other keys necessary for emergency service. The elevator key box shall be accessed using a 6049 numbered key. All existing elevator key box locks that do not use the numbered 6049 key shall be changed to the 6049 key by December 31, 2011.~~

~~6.5.2 IFC, Chapter 6, Section 609.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".~~

~~6.6 International Fire Code - Fire Protection Systems~~

6.6.1 IFC, Chapter 9, Section 901.2 is amended to add the following: The code official has the authority to request record drawings ("as builts") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as builts") that document all aspects of a fire protection system as installed.

6.6.3 IFC, Chapter 9, Section 901.6 is amended to add the following: The owner or administrator of each building shall insure the inspection and testing of water based fire protection systems as required in Rule R710-5, Automatic Fire Sprinkler System Inspecting and Testing.

6.6.4 IFC, Chapter 9, Section 903.2.1.2 is amended to add the following subsection: 4. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.6.5 IFC, Chapter 9, Section 903.2.3(2) is deleted and rewritten as follows: Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.6 IFC, Chapter 9, Section 903.2.6(2) is deleted and rewritten as follows: Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.7 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings.

6.6.8 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.6.9 IFC, Chapter 9, Section 903.2.8(2) is deleted and rewritten as follows: A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.10 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

6.6.10.1 Exception 1: Parking garages of less than 5,000 square feet (464m2) accessory to Group R-3 occupancies.

6.6.10.2 Exception 2: Open parking garages not located beneath other groups if one of the following conditions are met:

6.6.10.2.1 a. Access is provided for fire fighting operations to within 150 feet (45 720mm) of all portions of the parking garage as measured from the approved fire department vehicle access, or

6.6.10.2.2 b. Class I standpipes are installed throughout the parking garage.

6.6.11 IFC, Chapter 9, Section 903.2.9.1 is deleted and rewritten as follows: Commercial parking garages. An automatic sprinkler system shall be provided throughout buildings used for storage of commercial trucks or buses.

6.6.12 IFC, Chapter 9, Section 903.3.5 is amended by adding the following at the end of the section: The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707, Utah Uniform Building Standard Act Rules.

6.6.13 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout existing Group A-2 occupancies where indoor pyrotechnics are used.

6.6.14 IFC, Chapter 9, Section 904.11 is deleted and rewritten as follows: Commercial Cooking Systems. The automatic fire extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. The Exception in Section 904.11 is not deleted and shall remain as currently written in the IFC.

6.6.15 IFC, Chapter 9, Sections 904.11.3 and 904.11.3.1 is deleted and rewritten as follows:

6.6.15.1 Existing automatic fire extinguishing systems used for commercial cooking that use dry chemical is prohibited and shall be removed from service.

6.6.15.2 Existing wet chemical fire extinguishing systems used for commercial cooking that are not UL300 listed and labeled are prohibited and shall be either removed or upgraded to a UL300 listed and labeled system.

6.6.16 IFC, Chapter 9, Section 904.11.4 is amended to add the following subsection: 904.11.4.2. Existing automatic fire sprinkler systems protecting commercial cooking equipment, hood, and exhaust systems that generate appreciable depth of cooking oils shall be replaced with a UL300 system that is listed and labeled for the intended application.

6.6.17 IFC, Chapter 9 Section 904.11.6.4 is amended to add the following: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months, may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ.

6.6.18 IFC, Chapter 9, Section 905.11 is deleted.

6.6.19 IFC, Chapter 9, Section 907.2.10.1.4 is created as follows: Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances.

6.6.20 IFC, Chapter 9, Section 907.2.10.2 is amended as follows: On line two, line five, and line one of the Exception, the word "smoke" is deleted.

6.6.21 IFC, Chapter 9, Section 907.2.10.3 is amended as follows: On line two and line five, the word "smoke" is deleted. On line nine after the word "closed", add the following sentence: "Approved combination smoke and carbon monoxide detectors shall be permitted."

6.6.22 IFC Chapter 9, Section 907.2.10.4 is amended as follows: On line five after "NFPA 72" add "and NFPA 720, as applicable".

6.6.23 IFC, Chapter 9, Section 907.3 is deleted and rewritten as follows: An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

6.6.24 IFC, Chapter 9, Sections 907.3.1, 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.6.25 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.26 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.27 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

6.7 International Fire Code - Means of Egress

6.7.1 IFC, Chapter 10, Section 1008.1.8.3 is amended to add the following:

6.7.1.1 5. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

6.7.1.1.1 5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

6.7.1.1.2 5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

6.7.1.1.3 5.3 The controlled egress doors shall unlock upon loss of power.

6.7.1.1.4 5.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

6.7.1.2 6. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IFC, Section 1008.1.8.6. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

6.7.2 IFC, Chapter 10, Section 1009.3 is amended as follows: On line five of Exception 4 delete "7.75" and replace it with "8". On line seven of Exception 4 delete "10" and replace it with "9".

6.7.3 IFC, Chapter 10, Section 1009.10, is amended to add the following exception: 6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

6.7.4 IFC, Chapter 10, Section 1012.3 is amended to add the following: Exception: Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160mm)shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8mm) within 7/8 inch (22mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10mm) to a level that is not less than 1 3/4 inches (45mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32mm) to a maximum of 2 3/4 inches (70mm). Edges shall have a minimum radius of 0.01 inch (0.25mm).

6.7.5 IFC, Chapter 10, Section 1013.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.7.6 IFC, Chapter 10, Section 1015.2.2 is amended to add the following sentence at the end of the section: Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

6.7.7 IFC, Chapter 10, Section 1028.2 is amended to add the following: On line six after the word "fire" add the words "and building".

6.8 International Fire Code - Explosives and Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3, Exception 4 is amended to add the following sentence: The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.8.2 IFC, Chapter 33, Section 3308.12 is a new section as follows: Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

6.8.3 IFC, Chapter 33, Section 3308.13 is a new section as follows: Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

6.8.4 IFC, Chapter 33,Section 3308.14 is a new section as follows: Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

6.8.5 IFC, Chapter 33, Section 3308.15 is a new section as follows: Rack storage of Class C common state approved explosives inside of buildings is prohibited.

6.9 International Fire Code - Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3401.4 is amended to add the following at the end of the section: The owner of an underground tank that is out of service for longer than one year,

~~shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.~~

~~6.9.2 IFC, Chapter 34, Section 3405.5.1 is deleted and rewritten as follows: Corridor installations. Where wall-mounted dispensers containing alcohol-based hand rubs are installed in corridors, they shall be in accordance with all of the following: 1. Level 2 and Level 3 aerosol containers shall not be allowed in corridors. 2. The maximum capacity of each Class I or II liquids dispenser shall be 41 ounces and the maximum capacity of each Level I aerosol dispenser shall be 18 ounces. 3. The maximum quantity allowed in a corridor within a control group area shall be 10 gallons of Class I or II liquids or 1135 ounces of Level I aerosols or a combination of Class I or II liquids and Level I aerosols not to exceed in total the equivalent of 10 gallons. 4. Projections into a corridor shall be in accordance with Section 1003.3.3.~~

~~6.9.3 IFC, Chapter 34, Section 3406.1 is amended to add the following special operation: 8. Sites approved by the AHJ.~~

~~6.9.4 IFC, Chapter 34, Section 3406.2 is amended to add the following: On line five after the words "borrow pits" add the words "and sites approved by the AHJ".~~

~~6.10 International Fire Code - Liquefied Petroleum Gas~~

~~6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721 - 2,500, the currently stated "5" is deleted and replaced with "10".~~

~~6.10.2 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete 20 from line three and replace it with 10.~~

~~6.11 National Fire Protection Association~~

~~6.11.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.~~

~~6.11.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.~~

~~6.11.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.~~

~~6.11.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.~~

~~6.11.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.~~

~~6.11.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.~~

~~6.11.6 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.~~

~~6.11.7 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".~~

~~6.11.8 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".~~

~~6.11.9 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.~~]

R710-9-[~~7~~]6. Fire Advisory and Code Analysis Committee.

[~~7~~]6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

[~~7~~]6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

[~~7~~]6.2.1 A representative from the State Fire Marshal's Office.

[~~7~~]6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

[~~7~~]6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

[~~7~~]6.2.4 A representative from the Department of Health.

[~~7~~]6.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

[~~7~~]6.2.6 A representative from the Department of Human Services.

[~~7~~]6.2.7 A representative from Forestry, Fire and State Lands.

[~~7~~]6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

[~~7~~]6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

[~~7~~]6.5 The Council shall select one of it's members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

[~~7~~]6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-[~~8~~]7. Enforcement of the Rules of the State Fire Marshal.

[~~8~~]7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

[~~8~~]7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools

shall be completed by the SFM, or his authorized deputies, and the LFA.

[~~8~~]7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

[~~8~~]7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

[~~8~~]7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

[~~8~~]7.4.2 Public and private schools.

[~~8~~]7.4.3 Privately owned colleges and universities.

[~~8~~]7.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

[~~8~~]7.4.5 Places of assembly as defined in Section 9-2 of this rule.

[~~8~~]7.5 The Board shall require prior to approval of a grant the following:

[~~8~~]7.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

[~~8~~]7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-[~~9~~]8. Fire Prevention Board Budget and Amendment Sub-Committees.

[~~9~~]8.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

[~~9~~]8.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

[~~9~~]8.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-[~~10~~]9. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-[~~11~~]10. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-[~~12~~]11. Adjudicative Proceedings.

[~~12~~]11.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

[~~12~~]11.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

[~~12~~]11.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

[~~12~~]11.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

[~~12~~]11.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[~~12~~]11.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

[~~12~~]11.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

[~~12~~]11.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, law
Date of Enactment or Last Substantive Amendment: [~~May 27, 2009~~]July 1, 2010
Notice of Continuation: June 8, 2007
Authorizing, and Implemented or Interpreted Law: 53-7-204

Regents (Board of), Administration
R765-609
Regents' Scholarship

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 33581
FILED: 04/28/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Establish criteria outlining qualifying requirements for the Regents' Scholarship which rewards high school students who complete a rigorous curriculum as outlined by the Utah Scholars Initiative in preparation for postsecondary education.

SUMMARY OF THE RULE OR CHANGE: The Regents' Scholarship is established to reward Utah high school students who complete a rigorous high school curriculum in

preparation for postsecondary education. This scholarship is intended to provide incentive for all Utah high school students to prepare academically and financially through meaningful course work through their senior year which will allow a more successful transition to college and the demands of a modern workforce.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-8-108

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule is established as the result of legislative action that provides for a scholarship fund for the benefit of qualifying Utah high school graduates. There are no costs or savings to the state budget as a result of this rule, but rather the rule is required in support of the allocated funds by the legislature.
♦ LOCAL GOVERNMENTS: This rule does not affect local government and therefore there are no costs or savings to local governments as a result of this rule being implemented.
♦ SMALL BUSINESSES: This rule does not affect small businesses and therefore there are no costs or savings to small businesses as a result of this rule being implemented.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses or local government entities are not burdened by any costs as a result of this rule. Students qualifying for Regents' Scholarship funds will realize a savings when utilizing the scholarship to pay for higher education tuition charges at an eligible institution as defined within the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule or the scholarship program for which it is written.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since there are no fiscal impacts on businesses there is no comment by the department head on such matters.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: William Sederburg, Commissioner

R765. Regents (Board of), Administration.
R765-609. Regents' Scholarship.
R765-609-1. Purpose.

To encourage all Utah high school students to take a rigorous high school curriculum as outlined by the Utah Scholars Initiative that will successfully prepare them for postsecondary education and the demands of the modern workforce; to provide incentives for all Utah high school students to prepare academically and financially for postsecondary education; to motivate high school students to complete meaningful course work through their senior year; and to increase the numbers of Utahans enrolling in Utah colleges and universities.

R765-609-2. References.

2.1. Utah Code Ann. Section 53B-8-108 et seq., Regents' Scholarship Program.

2.2. Utah Admin. Code Section R277-700-7, High School Requirements (Effective for graduating students beginning with the 2010-2011 School Year).

2.3. Policy and Procedures R604, New Century Scholarship.

R765-609-3. Definitions.

3.1. "Base Award": A one-time scholarship to be awarded to students who complete the eligibility requirements of section 4.1 of this policy.

3.2. "Board": The Utah State Board of Regents.

3.3. "Core Course of Study": The 16.5 credit Utah Scholars' curriculum taken during grades 9-12, which includes:

3.3.1. 4.0 credits of English;

3.3.2. 4.0 credits of mathematics taken in a progressive manner (at minimum Algebra I, Geometry, Algebra II, and a class beyond Algebra II);

3.3.3. 3.5 credits of social studies;

3.3.4. 3.0 credits of lab-based natural science (one each of Biology, Chemistry, and Physics); and

3.3.5. 2.0 credits of the same foreign language, other than English, taken in a progressive manner.

3.4. "Exemplary Academic Achievement Award": A renewable scholarship to be awarded to students who complete the eligibility requirements of section 4.2 of this policy.

3.5. "Full-time": A minimum of twelve college credit hours.

3.6. "High school": A public or private high school within the boundaries of the State of Utah. If a private high school, it must be accredited by a regional accrediting body approved by the board.

3.7. "Home-schooled": Refers to a student who has not received a high school grade point average.

3.8. "Recipient": A student who receives an award under the requirements set forth in this policy.

3.9. "Regents' Diploma Endorsement": A certificate or transcript notation that may be awarded to students who qualify for the Exemplary Academic Achievement Award of the Regents' Scholarship.

3.10. "Reasonable progress": A recipient must complete at least twelve credit hours during Fall and Spring Semester or apply for and receive an approved Deferral or Leave of Absence from the Board. If applicable, students attending summer must enroll full-time according to their institution and or program policy regarding full-time status.

3.11. "Scholarship Review Committee": The committee approved to review Regents' Scholarship applications and make final decisions regarding awards.

3.12. "UESP": The Utah Educational Savings Plan.

3.13. "USHE": The Utah System of Higher Education, which includes the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State College of Utah, Utah Valley University, and Salt Lake Community College.

3.14. "Eligible Institutions": USHE, or at any private, nonprofit institution of higher education in Utah accredited by the Northwest Association of Schools and Colleges.

R765-609-4. Conditions of the Regents' Scholarship Program and Program Terms.

4.1. Base Award: To qualify for the Regents' Scholarship Base Award, the applicant must satisfy the following criteria:

4.1.1. Core Course of Study: The applicant must submit an official high school transcript, and college transcript if the student has completed any college courses that are part of the Core Course of Study during grades 9-12, even if the concurrent/college classes is reflected on the high school transcript, (Information regarding courses satisfying the core requirements can be found online). If the core course is one full credit students must complete the full unit in order to satisfy the credit requirement in a specific core area.

4.1.2. GPA and Weighted Courses: The applicant must demonstrate completion of the Core Course of Study with a cumulative high school GPA of at least 3.0, with no individual core course grade lower than a "C" on a transcript . The grade earned in any course designated on the student's high school transcript as Advanced Placement (AP) or a college course concurrent enrollment shall be weighted (only if college transcript is provided) according to the Scholarship Review Committee's standard procedures.

4.1.3. College Course Work: The Regents' Scholarship Review Committee reserves the right to apply a 3:1 ratio in relation to college course work. If a student enrolls in and completes a college course worth three or more college credits, this may be counted as one full credit towards the scholarship requirements, however; the student then is evaluated on the college grade earned, with the weighted added to the college grade.

4.1.4. ACT Score: The applicant must submit at least one verified ACT score.

4.1.5. Utah High School Graduation: The applicant must have graduated from a Utah high school.

4.1.6. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.1.7. No Criminal Record Requirement: A recipient shall not have a criminal record; with the exception of a misdemeanor traffic citation.

4.1.8. Mandatory Fall Term Enrollment: A recipient shall enroll full-time at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved Deferral from the Board under subsection 7.2.

4.1.9. New Century Scholarship: A recipient shall not receive a Regents' Scholarship and the New Century Scholarship established in Utah Code Section53B-8-108 and administered in R604.

4.2. Exemplary Academic Achievement Award: To qualify for the Regents' Scholarship Exemplary Academic Achievement Award, the applicant must satisfy all requirements for the Base Award, and additionally meet all of the following requirements:

4.2.1. Required GPA: The applicant must have a cumulative high school GPA of at least 3.5, with no individual core course grade lower than a "B" on a transcript.

Required ACT Score: The applicant must submit a verified composite ACT score of at least 26.

4.2.2. Duty of Student to Report Reasonable Progress Toward Degree Completion: In order to renew the Exemplary Academic Achievement Award, the recipient must maintain and report reasonable progress toward degree completion by achieving a 3.0 GPA each semesters and by enrolling full-time (twelve credit hours) each semester. If the recipient fails to maintain a 3.0 GPA for two consecutive semesters or fails to enroll full-time, the scholarship will be revoked. Students will be required to pay back the entire payment received for the semester in which the student did not enroll full-time.

4.2.2.1. Each semester, the recipient must submit to the Scholarship Review Committee an official college transcript verifying his/her grades to demonstrate that he/she is meeting the required GPA and is making reasonable progress as well as detailed schedule as proof of full-time enrollment by the dates listed below. A recipient must apply for and receive and approved Leave of Absence if he or she will not enroll full-time in continuous Fall and Spring Semesters.

4.2.2.2. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

4.2.2.3. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

4.2.2.4. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

4.2.2.5. Proof of enrollment if you are attending Brigham Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.
Proof of enrollment if you are attending Brigham Young University during Spring Semester and proof of completion of the previous semester must be submitted by May 30.

4.2.2.6. Proof of enrollment if you are attending Brigham Young University during Summer Semester and proof of completion of the previous semester must be submitted by July 30.

4.2.3. If a student earns less than a 3.0 GPA in any single semester, the student must earn a 3.0 GPA or better the following semester to maintain eligibility for the scholarship.

4.2.4. A student will not be required to enroll full-time if the student can complete his/her degree program with fewer credits.

4.3. Replacing Low Grades by Retaking a Course: A student may retake a course to replace a low received grade. When retaking courses to replace a grade the following subsections apply:

4.3.1. The Entire Course: The student must either (1) retake the entire original course, or (2) complete an approved course equal to or greater in credit value in the same subject-area. The math and foreign language requirement of progression must be shown. This is true even if the student only received a lower grade in a single semester, trimester, or quarter.

4.3.2. The Higher of Two Grades: The higher of two grades in the same or an approved course will count towards meeting the scholarship requirements.

4.3.3. Approved Courses and Progression Determined by the Regents' Scholarship Review Committee: The Regents' Scholarship Review Committee reserves the right to determine if the repeated course qualifies as an approved course in the same subject-area and if progression is required and demonstrated.

4.4. Eligible Institutions: Both the Base Award and the Exemplary Academic Achievement Award may be used at any public college or university within USHE, or at any private, nonprofit institution of higher education in Utah accredited by the Northwest Association of Schools and Colleges.

4.5. Student Transfer: A scholarship may be transferred to a different eligible institution upon request of the student.

4.6. "P" and "I" Grades not Accepted: Pass/fail or incomplete grades do not meet the minimum grade requirement, nor do they qualify towards the scholarship renewal requirements.

R765-609-5. Application Procedures.

5.1. Application Deadline: Students must submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year that they graduate from high school. A priority deadline may be established each year. Students who meet the priority deadline may be given first priority or consideration for the scholarship.

5.2. Required Documentation: Scholarship awards may be denied if all documentation is not submitted, if any documentation demonstrates that the applicant did not satisfactorily fulfill all course and GPA requirements, or if any information, including the attestation of criminal record or citizenship status, proves to be falsified. Required documents that must be submitted with a scholarship application include:

5.2.1. the official application;

5.2.2. an official high school paper or electronic transcript, official college transcript(s) when applicable, and any other miscellaneous transcripts demonstrating all completed courses and GPA. A final transcript showing the last semester of coursework will be requested if the student is found conditionally approved, meaning that the student appears to be on track to receive the scholarship;

5.2.3. verified ACT scores; and

5.2.4. a class schedule form, provided by the Board, demonstrating the courses and credits that the student will completed during grade twelve. Simply submitting a high school transcript does not satisfy this requirement.

5.3. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, and will not be reviewed.

R765-609-6. Amount of Awards and Distribution of Award Funds.

6.1. Funding Constraints of Awards: The Board may limit or reduce the Base Award and/or the Exemplary Academic Achievement Award, as well as supplemental awards granted, depending on the annual legislative appropriations and the number of qualified applicants.

6.2. Amount of Awards.

6.2.1. Base Award: The Base Award of up to $1,000 may be adjusted annually by the Board in an amount up to the average percentage tuition increase approved by the Board for USHE institutions.

6.2.2. Exemplary Academic Achievement Award.

6.2.2.1. For a students who graduates from high school in the 2009-10 school year and prior

6.2.2.1.1. If used at a USHE institution, the award is equal in value up to seventy-five percent of the tuition costs at the selected institution; or

6.2.2.1.2. If used at a private, nonprofit institution of higher education in Utah accredited by the Northwest Association of Schools and Colleges, the award is equal in value up to seventy-five percent of the tuition costs at the selected institution, not to exceed seventy-five percent of the average tuition costs of the USHE institutions.

6.2.2.2. For a student who graduates from high school in or after the 2010-11 school year or prior and still has remaining eligibility, the total award is up to $5,000, allocated semester-by-semester throughout whichever of the following time periods is the shortest: Recipients are not entitled to the maximum award.

6.2.2.2.1. Four semesters of full-time enrollment (minimum of twelve credit hours per semester);

6.2.2.2.2. Sixty-five credit hours; or

6.2.2.2.3. Until the student meets the requirements for a Baccalaureate degree.

6.3. Distribution of Award Funds.

6.3.1. Tuition Documentation: The award recipient must submit to the Scholarship Review Committee a copy of the college class schedule verifying that the student is enrolled full-time (twelve or more credits) at an eligible institution. Documentation must include the student's name, institution they are attending and the number of credits in which the student is enrolled.

6.3.2. Award Payable to Institution: The award will be made payable to the institution. The institution may pay over to the recipient any excess award funds not required for tuition payments. Award funds shall be used for any qualifying higher education expense, including tuition, fees, books, supplies, equipment required for course instruction, or housing.

6.3.3. Credit Hours Dropped after Award Payment: If a student drops credit hours after having received the award which results in enrollment below twelve credit hours, the scholarship will be revoked.

6.3.4. High School Graduates of 2010 and Before: The following subsections only apply to students who graduated from high school in 2010 and before:

6.3.4.1. Tuition Calculation by the Board: The Board will calculate the award disbursement amount based on the published tuition costs at the enrolled institution(s) and the availability of scholarship funding.

6.3.4.2. Added Hours after Award Payment: At the discretion of the Scholarship Review Committee and depending on funding, the student may be awarded up to seventy-five percent of the tuition costs of any hours added in the semester after the initial award has been made. The recipient must submit to the USHE a copy of the tuition invoice and a class schedule verifying the added hours before a supplemental award is made.

6.3.4.3. Credit Hours Dropped after Award Payment: If a student drops credit hours which were included in calculating the award amount, either the subsequent semester award will be reduced accordingly, or the student shall repay the excess award amount to the USHE If the student drops below twelve credit hours.

6.4. UESP Supplemental Award to Encourage College Savings: Subject to available funding, a student who qualifies for the Base Award is eligible to receive up to an additional $400 in state funds to be added to the total scholarship award.

6.4.1. For each year the student is 14, 15, 16, or 17 years of age that the student had an active UESP account, the Board may contribute, subject to available funding, $100 (i.e., up to $400 total for all four years) to the student's award if at least $100 was deposited into the account for which the student is named the beneficiary.

6.4.2. If no contributions are made to a student's account during a given year, the matching amount will likewise be $0.

6.4.3. If contributions total more than $100 in a given year, the matching amount will cap at $100 for that year.

6.4.4. Matching funds apply only to contributions, not to transfers, earnings, or interest.

R765-609-7. Time Constraints and Continuing Eligibility.

7.1. Time Limitation: A Regents' Scholarship recipient must use the award in its entirety within five years after his/her high school graduation date.

7.2. Deferral or Leave of Absence.

7.2.1. Deferrals or leaves of absence may be granted, at the discretion of the Scholarship Review Committee, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

7.2.2. An approved deferral or leave of absence will not extend the time limits of the scholarship. The scholarship may only be used for academic terms which begin within five years after the recipient's high school graduation date.

7.3. No Guarantee of Degree Completion: Neither a Base Award nor an Exemplary Academic Achievement Award guarantees that the recipient will complete his or her Associate or Baccalaureate program within the recipient's scholarship eligibility period.

R765-609-8. Scholarship Determinations and Appeals.

8.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee, based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

8.2. Appeals: Applicants may appeal a denial of the scholarship by submitting a written appeal to the USHE within 30 days of receipt of the decision letter. Appeals will be reviewed and decided by an appeals committee appointed by the Commissioner of Higher Education. A list of required documents for an appeal is listed on the Regents' Scholarship Appeal Form.

KEY: higher education, scholarships, secondary education
Date of Enactment or Last Substantive Amendment: June 21, 2010
Authorizing and Implemented or Interpreted Law: 53B-8-108

Transportation, Operations, Construction
R916-6
Drug and Alcohol Testing in State Construction Contracts

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33587
FILED: 04/29/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to comply with Section 63G-6-604.

SUMMARY OF THE RULE OR CHANGE: The rule sets forth: 1) the requirement that contractors and subcontractors in state construction contracts have in place a drug and alcohol testing policy in compliance with Section 63G-6-604; 2) the procedure to certify compliance; and 3) penalties, reasonable notice, and the opportunity to cure a violation before suspension or debarment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-604 and Section 72-1-201

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings to include the drug and alcohol testing policy requirement in state construction contracts. Some administrative costs may be incurred if an enforcement action is necessary for violation of the rule.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because the rule only applies to state construction contracts.

♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses, unless they are a contractor or subcontractor in a state construction contract, in which case they would have the cost of implementing a drug and alcohol testing policy.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities, unless they are a contractor or subcontractor in a state construction contract, in which case they would have the cost of implementing a drug and alcohol testing policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A contractor or subcontractor in a state construction contract will have the cost of implementing a drug and alcohol testing policy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses unless they are a contractor or subcontractor in a state construction contract, in which case they would have the cost of implementing a drug and alcohol testing policy.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, CONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: John Njord, Executive Director

R916. Transportation, Operations, Construction.
R916-6. Drug and Alcohol Testing in State Construction Contracts.
R916-6-1. Purpose.
The purpose of this rule is to comply with the provisions of Section 63G-6-604.

R916-6-2. Authority.
This rule is required by Section 63G-6-604 and is enacted under the authority of Section 72-1-201.

R916-6-3. Definitions.
Except as otherwise provided in this rule, the terms used are defined in Subsection 63G-6-604(1).
(1) "Department" means the Utah Department of Transportation.

R916-6-4. Requirements and Procedures.
A contractor or subcontractor shall demonstrate compliance with the requirements of Section 63G-6-604 by certifying in the contract documents that the contractor or subcontractor has and will maintain a drug and alcohol testing policy that meets all the requirements of Section 63G-6-604 during the period of the state construction contract.

R916-6-5. Penalties.
A contractor or subcontractor's failure to comply with the provisions of Section 63G-6-604 will be considered a breach of the terms of the contract and the Department may pursue all remedies and impose all penalties allowed by law, including but not limited to suspension and debarment.

R916-6-6. Reasonable Notice and Opportunity to Cure.
The Department shall give reasonable notice and an opportunity to cure a violation of Section 63G-6-604 before suspension or debarment of the contractor or subcontractor under R916-6-5.

KEY: contracts, drug and alcohol testing
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 63G-6-604, 72-1-201

Workforce Services, Employment Development
R986-200-247
Utah Back to Work Pilot Program (BWP)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33597
FILED: 04/29/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to establish a pilot program to help unemployment claimants return to work.

SUMMARY OF THE RULE OR CHANGE: Employers that hire unemployment claimants or unemployed youth may be eligible for a subsidy for providing employment. It is hoped that this pilot program will provide job opportunities to unemployed individuals and save the unemployment trust fund reserves. It will also help employers who can use workers but because of the current economic problems might not be able to pay the full wage.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This pilot is being paid out of federal funds and there is no cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: This is a state-wide program paid for with federal funds and there will be no costs or savings for local governments.
♦ SMALL BUSINESSES: There could be a cost savings to small businesses that agree to participate. The Department will pay up to $2,000 per newly hired employee. It will also save the unemployment trust fund which small businesses pay into. There will be no costs to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to other persons. This is a voluntary program offering employment to eligible unemployed individuals including youth.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this program to any persons.

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.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-247. Utah Back to Work Pilot Program (BWP).

(1) BWP is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible unemployment insurance (UI) claimant. To be eligible, a UI claimant must:

(a) be currently receiving UI benefits and have received at least one week of paid UI benefit. The waiting week is not considered a "paid" benefit for the purposes of this section;

(b) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(c) have at least 10 weeks of regular UI benefits remaining on his or her claim. The 10 weeks do not include Extended Benefits under 35A-4-402 or Emergency Unemployment Compensation (EUC) benefits as defined by the UI division;

(d) be the parent of at least one minor dependent child and be contributing to the financial support of that child or children;

(e) have UI base period wages of not more than $7,800 in any quarter of the base period;

(f) have not worked for the employer where the claimant is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the BWP program; and

(g) have not previously participated in the BWP or BWY program.

(2) The Utah Back to Work Youth Program (BWY) provides short term subsidized employment for a maximum of three months to unemployed youth 18-24 years of age. BWY youth must be legally eligible to work in the U.S. and be unemployed but do not need to be receiving or eligible to receive UI benefits. BWY youth do not need to be a parent but must meet the requirement of subsection (1)(f) and have not participated in the BWP or BWY program before.

(3) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" under the "Hiring Incentives to Restore Employment Act" of 2010 which "means any employer other than the United States, any State, or any political subdivision" or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least $9 per hour. Commission only jobs may qualify if the employer guarantees $9 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the claimant with at least 35 hours work per week; and

(g) does not hire the claimant for temporary or seasonal work.

(4) Once it has been verified that a claimant has been hired, a qualified employer will be paid a $500 subsidy and an additional $1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(5) BWP and BWY will continue for as long as funding is available.

KEY: family employment program
Date of Enactment or Last Substantive Amendment: [~~April 1,~~]2010
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

Workforce Services, Employment Development
R986-900-902
Options and Waivers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33599
FILED: 04/29/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the way income of an illegal alien is counted.

SUMMARY OF THE RULE OR CHANGE: The Department now prorates the income of an illegal alien in the household. Food Stamp regulations allow the Agency to not prorate that income. The Department is electing this waiver and will no longer prorate the income for either the gross or the net tests.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-104 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This is a federally-funded program and there are no costs or savings to state government.
♦ LOCAL GOVERNMENTS: This is a federally-funded program and there are no costs or savings to local government.
♦ SMALL BUSINESSES: This is a federally-funded program and there are no costs or savings to any small business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: If a household has one or more illegal aliens, the household may receive less in food stamps as a result of this change. No illegal alien receives food stamps under any circumstances. However, there could be an impact on a household where an illegal alien resides. Those are the only individuals affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any persons.

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.

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 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 NO LATER THAN AT 5:00 PM ON 06/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2010

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients

so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(l) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(m) The Department has opted to align food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(n) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(o) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving food stamps and FEP or FEPTP, must participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

[~~(p) Effective July 1, 2010, the Department will count the full income of an undocumented, ineligible household member for the gross income test, but that income will be prorated for the net income test and the allotment test. Expenses will continue to be prorated among the eligible household members and the full value of all assets will continue to be counted.~~

](p) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(c) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(d) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(e) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(f) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(g) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(h) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(i) The Department will hold disqualification hearings by telephone.

(j) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or

recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(k) The federal regulation that requires all interviews be scheduled for a specific date and time is waved for initial telephone interviews. This allows clients to call anytime Monday through Thursday from 7 am to 5:30 p.m. to complete the required initial interview.

(l) To meet the student work exemption. a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The work hours must be averaged over the 30 days immediately prior to the date of application or recertification.

KEY: food stamps, public assistance
Date of Enactment or Last Substantive Amendment: 2010
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-103

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. Comments may be made on the **Proposed Rule**. Emergency or **120-Day Rules** are governed by Section 63G-3-304; and Section R15-4-8.

Judicial Performance Evaluation Commission, Administration
R597-3-1
Evaluation Cycles

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 33578
FILED: 04/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Commission is changing the number of attorney survey respondents in the hopes of achieving a more statistically significant response level. The change also limits the number of surveys that each attorney may receive.

SUMMARY OF THE RULE OR CHANGE: Rather than surveying a standard 180 attorneys per judge, the Commission will survey the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5% or, if there are not enough attorneys, all attorneys who have appeared before the judge during the evaluation cycle. The Commission will also not ask any attorney to complete more than five surveys.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-206

REGULAR RULEMAKING WOULD place the agency in violation of federal or state law.
The current rule, which has the force of law, requires the Commission to survey 180 attorneys per judge. Without these changes, The Commission would violate that provision. The emergency rule will allow more accurate results from the attorney survey.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the survey is being administered electronically and, therefore, changing the number of survey respondents for each judge will have no financial impact.
♦ LOCAL GOVERNMENTS: Because the Commission has no authority with respect to local government, there is no anticipated cost or savings to local government.
♦ SMALL BUSINESSES: Because the Commission has no authority with respect to small businesses, there is no anticipated cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the Commission has no authority with respect to persons other than small businesses, businesses, or local government entities, there is no anticipated cost or savings to these entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Commission assumes all compliance costs. Any affected persons do not assume compliance costs of the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

Because the Commission does not regulate business, there is no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SENATE BUILDING B-330
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

EFFECTIVE: 04/27/2010

AUTHORIZED BY: V. Lowry Snow , Chair

R597. Judicial Performance Evaluation Commission, Administration.
R597-3. Judicial Performance Evaluations.
R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. The mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges standing for retention election in 2012:

(i) The mid-term evaluation cycle for attorney surveys shall begin on January 1, 2008 and end on December 31, 2009.

(ii) The mid-term evaluation cycle for all other survey categories shall begin in 2009 and end on January 31, 2010.

(iii) The retention evaluation cycle for all surveys shall begin no later than July 1, 2010, and end on June 30, 2011.

(b) For judges not on the supreme court standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.

(ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle will be as described in R597-3-1(1)(b),
supra.

(c) For supreme court justices standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.

(ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle shall be as described in R597-3-1(2)(b)-(c).

(d) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall distribute the survey questionnaires upon which the judge shall be evaluated to each judge at the beginning of the survey cycle.

(c) In 2010, the commission shall finalize survey questionnaires and implementation procedures for each respondent classification.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle.

(ii) Number of survey respondents. For each judge who is the subject of a survey, the surveyor shall identify [~~180 potential respondents or all attorneys appearing before the judge, whichever is less~~]the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%; or, in the event that an insufficient number of attorneys have appeared before the evaluated judge to achieve that

confidence level, all attorneys who have appeared before the judge during the evaluation cycle, excepting attorneys who have already been asked to evaluate five judges.

(iii) Sampling. No attorney will be asked to complete more than five surveys in a single evaluation cycle. The surveyor shall [~~make a random selection of respondents and shall otherwise~~]design the survey to comply with generally-accepted principles of surveying.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be given a juror questionnaire.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall distribute surveys to the jurors. The bailiff or clerk shall collect completed surveys, seal them in an envelope, and mail them to the surveyor. The surveyor shall deliver survey results electronically to each judge.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge shall include, where applicable:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) juvenile probation and intake officers;

(I) other courthouse staff, as appropriate;

(J) Administrative Office of the Courts staff.

(ii) Pilot program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying court staff.

(d) Litigants

(i) Identification of survey respondents. The following categories are litigants for purposes of the judicial performance evaluation survey:

(A) any named party to an action;

(B) any person 14 years of age or older;

(C) the parent, foster parent, guardian, or legal custodian of any minor;

(D) the designated representative of a corporate or like entity;

(E) an executor, administrator, guardian, or like person representing a real party in interest.

([~~)~~(]ii) The representative of the prosecuting entity in a criminal case shall be surveyed as an attorney. Prosecutor responses to the judicial temperament part of the survey shall be reported in both the attorney and litigant portions of the judicial evaluation report.

(iii) Pilot Program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying litigants.

(e) Witnesses

(i) Identification of survey respondents.

(A) District and Justice Court. A witness is anyone not surveyed as a litigant who is sworn and testifies in court before a judge who is being evaluated. Any witness who is 14 years of age or older is qualified as a witness survey respondent.

(B) Juvenile Court. A witness is anyone who does not fall within another survey respondent group and who proffers or testifies in court before a judge who is being evaluated.

(ii) Pilot Program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying witnesses.

(f) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation [~~&~~]and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying juvenile court professionals.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys
Date of Enactment or Last Substantive Amendment: April 27, 2010
Authorizing, and Implemented or Interpreted Law: 78A-12

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 agency is required to review the rule. This review is intended 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 upon filing.

Notices are governed by Section 63G-3-305.

Commerce, Consumer Protection
R152-1
Utah Division of Consumer Protection: "Buyer Beware List"

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33583
FILED: 04/28/2010

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 13-2-5(1) authorizes issuance of administrative rules. Subsection 13-2-5(5) authorizes providing consumer information and education to the public. Subsection 13-11-8(1) authorizes the publication of the list.

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 were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Buyer Beware List is an important tool that the Division uses to inform the public about business entities that have violated consumer protection statutes. It also serves as an effective enforcement tool to persuade business entities to comply with consumer protection statutes. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
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:
♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Kevin Olsen , Director

EFFECTIVE: 04/28/2010

Commerce, Consumer Protection
R152-39
Child Protection Registry Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33598
FILED: 04/29/2010

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 13-2-5(1) authorizes issuance of administrative rules. Section 13-39-203

mandates that the Division make administrative rules to implement the Child Protection Registry.

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 were received in support of or opposing the administrative rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule is necessary for the Division to meet its statutory mandate set forth in Section 13-39-203 and the rule is essential to effective implementation of the Child Protection Registry.

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

COMMERCE
CONSUMER PROTECTION
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:
♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Kevin Olsen , Director

EFFECTIVE: 04/29/2010

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State law continues to direct the Board to adopt rules for the conduct and administration of assessment programs. The rule continues to provide necessary standards and procedures for school districts and charter schools to follow when administering standardized tests. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 04/29/2010

Education, Administration
R277-473
Testing Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33588
FILED: 04/29/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-603(3) directs the Utah State Board of Education (Board) to adopt rules for the conduct and administration of the assessment programs. Subsection 53A-1-401(3) permits the Board to adopt rules in accordance with its responsibilities.

Insurance, Administration
R590-172
Notice to Uninsurable Applicants for Health Insurance

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33595
FILED: 04/29/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-29-116 requires the department to write a rule governing the notice of availability to be given by insurers to potential enrolees in the Health

Insurance Pool (HIP). This rule sets requirements as to when and to whom the notice is to be given and the wording required in the notice.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the time that this rule was having its last five-year review, the rule was also being amended. During the comment period we received one comment that was reviewed and applied the suggestion to the rule in a Change in Proposed Rule filing. The department has not received any other comments regarding this rule since then.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the language that insurers must use to notify someone that they are being denied coverage and that they have the option to go to the HIPUtah Pool. The notice provides the consumer with time frames and the residency requirements to qualify for the Pool. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/29/2010

Public Safety, Criminal Investigations and Technical Services, Criminal Identification

R722-330

Licensing of Private Investigators

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33567
FILED: 04/22/2010

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 53-9-103(6) requires the Commissioner of Public Safety to make rules and establish procedures for issuing licenses for Private Investigators.

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 THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to establish procedures for determining applicant eligibility to receive a Private Investigator license. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alice Erickson by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

AUTHORIZED BY: Alice Erickson, Bureau Chief

EFFECTIVE: 04/22/2010

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services
Finance
No. 33302 (AMD): R25-7-10. Reimbursement for Transportation
Published: 02/01/2010
Effective: 04/21/2010

Commerce
Real Estate
No. 33398 (AMD): R162-106-7. Sales and Listing History
Published: 03/15/2010
Effective: 04/28/2010

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 33414 (AMD): R414-1-28. Cost Sharing
Published: 03/15/2010
Effective: 05/01/2010

No. 33415 (AMD): R414-10-6. Copayment Policy
Published: 03/15/2010
Effective: 05/01/2010

No. 33416 (AMD): R414-11-8. Copayment Policy
Published: 03/15/2010
Effective: 05/01/2010

No. 33417 (AMD): R414-55-3. Copayment Policy
Published: 03/15/2010
Effective: 05/01/2010

No. 33418 (AMD): R414-60-6. Co-payment Policy
Published: 03/15/2010
Effective: 05/01/2010

No. 33419 (AMD): R414-200-4. Cost Sharing
Published: 03/15/2010
Effective: 05/01/2010

Money Management Council
Administration
No. 33420 (AMD): R628-11. Maximum Amount of Uninsured Public Funds Allowed to Be Held by Any Qualified Depository
Published: 03/15/2010
Effective: 04/27/2010

Natural Resources
Parks and Recreation
No. 33408 (AMD): R651-101-1. Authority and Effective Date
Published: 03/15/2010
Effective: 04/21/2010

No. 33422 (AMD): R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit
Published: 03/15/2010
Effective: 04/21/2010

No. 33424 (AMD): R651-219-7. Equipment Exemptions
Published: 03/15/2010
Effective: 04/21/2010

No. 33421 (NEW): R651-412. Curriculum Standards for OHV Education Programs Offered by Non-Division Entities
Published: 03/15/2010
Effective: 04/21/2010

Public Safety
Driver License
No. 33411 (AMD): R708-39-4. Knowledge Testing
Published: 03/15/2010
Effective: 04/21/2010

Workforce Services
Employment Development
No. 33383 (AMD): R986-700. Child Care Assistance
Published: 03/01/2010
Effective: 04/21/2010

No. 33412 (AMD): R986-900-902. Options and Waivers
Published: 03/15/2010
Effective: 05/01/2010

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, 2010, including notices of effective date received through April 30, 2010. 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 is not included in this issue of the Utah State Bulletin. The release of eRules version 2.0 has introduced different functionality with regards to the index; this functionality has yet to be fully tested. Persons interested in alternative methods of acquiring the same information should visit "Researching Administrative Rules" at: http://www.rules.utah.gov/research.htm

Questions regarding the index and the information it contains should be addressed to 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/).