UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed April 16, 2011, 12:00 a.m. through May 02, 2011, 11:59 p.m.

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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.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
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EDITOR'S NOTES

Codification Error of the Amendment on Rule R805-2, DAR No. 34387, Effective 03/24/2011

On 01/26/2011, the University of Utah filed an amendment to Rule R805-2, Government Records Access and Management Act Procedures, under DAR No. 34387. This filing was published in the February 15, 2011, Bulletin; a Notice of Effective Date was subsequently filed, making the amendments effective on 03/24/2011. The Notice of Effective Date was erroneously processed as a five-year review. As a result, the amended text was not made part of the April update as it ought to have been. The correct text will be made part of the May update. The Division of Administrative Rules regrets the error.

Questions concerning this error may be addressed to: Michael Broschinsky, Administrative Code Editor, Division of Administrative Rules by phone: 801-538-3003; by FAX: 801-359-0759; or by email: mbroschi@utah.gov

End of the Editor's Notes Section

SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for June 2011 Medicaid Rate Changes

Effective June 1, 2011, 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

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, 2011, 12:00 a.m., and May 02, 2011, 11:59 p.m. are included in this, the May 15, 2011 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, 2011. 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, 2011, 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

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34764
FILED: 05/02/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Annual fiscal year update of travel rates and general updates of the rule.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) update travel related rates for FY 2012; 2) remove gender specific wording; 3) reflect certain travel policies in the rule; and 4) make technical corrections.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Slight increase in the maximum mileage rate by $0.01 for employees when a state car is not available. This is a 2% increase in the maximum rate; however, agencies are allowed to set a rate that is more restrictive than allowed.
♦ LOCAL GOVERNMENTS: There is no cost or savings to local governments, because the Division of Finance's authority extends only to state employees.
♦ SMALL BUSINESSES: There could be a slight increase or decrease in revenue for hotels that qualify as small businesses depending on the location and whether the rate went up or down for their location. The Division cannot specify the increase in revenue because it is not known how many state employees will travel. This will only apply to those hotels that agree to accept the standard hotel per diem rates established in this rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: State employees applying for reimbursement will possibly see an increase of $0.01 per mile traveled in their reimbursement for mileage driven in their own vehicle if a state car is unavailable. However, it depends on whether the employing agency adopts the maximum rate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs because the reimbursement process hasn't changed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Possible fiscal impact on businesses will be minimal. Hotels are not required to accept state established hotel per diem rates. No other amendments to this rule will affect businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the [~~department head~~]Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

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

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

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

(a) The daily travel meal allowance for in-state travel is $36.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$9.00
Lunch	$11.00
Dinner	$16.00
Total	$36.00

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

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$21.00
Total	$45.00

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

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

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

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

(ii) If lunch is provided deduct $18, leaving a premium allowance for breakfast and dinner of actual up to [~~$42~~]$41.

(iii) If dinner is provided deduct $27, leaving a premium allowance for breakfast and lunch of actual up to [~~$33~~]$32.

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

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

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

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

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-6:00	6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
$36.00	$27.00	$16.00	$0
Out-of-State			
$45.00	$35.00	$21.00	$0

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

(b) The days at the location.

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

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

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

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-7:00	7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$9.00	$20.00	$36.00
Out-of-State			
$0	$10.00	$24.00	$45.00

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

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

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

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

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

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

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

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

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

R25-7-8. Reimbursement for Lodging.

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

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

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

TABLE 5

Cities with Differing Rates

~~[Altamont~~	~~$70 plus tax~~
~~Boulder~~	~~$70 plus tax~~
~~Bryce~~	~~$70 plus tax~~
~~Bullfrog~~	~~$70 plus tax~~
~~Cedar City~~	~~$70 plus tax~~
~~Delta~~	~~$70 plus tax~~
~~Fillmore~~	~~$70 plus tax~~
~~Heber City/Midway~~	~~$90 plus tax~~
~~Kanab~~	~~$75 plus tax~~
~~Layton~~	~~$70 plus tax~~
~~Logan~~	~~$75 plus tax~~
~~Mexican Hat~~	~~$70 plus tax~~
~~Moab~~	~~$90 plus tax~~
~~Nephi~~	~~$70 plus tax~~
~~Ogden~~	~~$70 plus tax~~
~~Panguitch~~	~~$70 plus tax~~
~~Park City~~	~~$90 plus tax~~
~~Payson~~	~~$70 plus tax~~
~~Price~~	~~$70 plus tax~~
~~Provo/Orem/Lehi~~	~~$75 plus tax~~
~~Salt Lake City/Tooele~~	~~$90 plus tax~~
~~Springville~~	~~$70 plus tax~~
~~St George/Washington/Springdale~~	~~$70 plus tax~~
~~Torrey~~	~~$70 plus tax~~
~~Tremonton~~	~~$70 plus tax~~
~~Vernal/Roosevelt~~	~~$90 plus tax~~
~~All Other Utah Cities~~	~~$65 plus tax~~]
American Fork	$75.00 plus tax
Beaver	$70.00 plus tax
Blanding	$70.00 plus tax
Cedar City	$70.00 plus tax
Delta	$70.00 plus tax
Ephraim	$70.00 plus tax
Fillmore	$70.00 plus tax
Green River	$70.00 plus tax
Heber City/Midway	$90.00 plus tax
Kanab	$75.00 plus tax
Layton	$70.00 plus tax
Logan	$75.00 plus tax
Moab	$90.00 plus tax
Nephi	$70.00 plus tax
Ogden	$70.00 plus tax
Panguitch	$70.00 plus tax
Park City	$90.00 plus tax
Price	$75.00 plus tax
Provo/Orem/Lehi	$75.00 plus tax
Roosevelt	$90.00 plus tax
Salina	$70.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	$90.00 plus tax
St George/Washington/Springdale	$75.00 plus tax
Tremonton	$70.00 plus tax
Torrey	$70.00 plus tax
Vernal	$90.00 plus tax

(3) State employees traveling less than 50 miles in excess of their normal office commute are not entitled to lodging reimbursement.

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

[~~(3)~~](5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location.

[~~(4)~~](6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

[~~(5)~~](7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

[~~(6)~~](8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

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

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

[~~(7)~~](9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

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

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

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

[~~(8)~~](11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

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

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

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

[~~(9)~~](12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

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

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

R25-7-9. Reimbursement for Incidentals.

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

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

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

(b) No other gratuities will be reimbursed.

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

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

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

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

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt for amounts of $20 or more.

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

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

(b) If a traveler must pay the registration when [~~he~~]they arrive[~~s~~], the agency is expected to process a Payment Voucher and have the traveler take the state warrant with [~~him~~]them.

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

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

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

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

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

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

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

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

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

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

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

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

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

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

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

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

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

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

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

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

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

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

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of 36 cents per mile or [~~50~~]51 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [~~50~~]51 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 36 cents per mile.

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

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

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reimbursement will be made at 75 cents per mile.

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

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

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

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: [~~August 1, 2010~~]2011
Notice of Continuation: April 29, 2008
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Agriculture and Food, Plant Industry
R68-7
Utah Pesticide Control Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34711
FILED: 04/25/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to bring the rule in compliance with the recent changes in law for pesticides eliminating the one-year renewal option for commercial pesticide applicator license and restricted use pesticide dealer license. Adds change of address notification request, and corrects an unintentional error found in an earlier proposed rule.

SUMMARY OF THE RULE OR CHANGE: The changes bring the rule in compliance with the recent changes in law for pesticides eliminating the one-year renewal option for commercial pesticide applicator license and restricted use pesticide dealer license. Only a three-year license will be available. Adds change of address notification request. Also, to correct an unintentional error found in an earlier proposed rule. An error was found in Subsection R68-7-13(4) the rule, it said "would" when it should have said "would not". The rule was changed from would hurt humans and animals to would not. No money is associated with this change.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-14-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget is not affected by this amendment. The change is in the fee schedule, no fees were raised, it was a cost savings by only having a three-year license option. The change of address requirement also did not affect the state budget. Also corrects a grammatical error. No money is associated with this change.
♦ LOCAL GOVERNMENTS: The local government budget is not affected by this amendment. The change is in the fee schedule, no fees were raised, it was a cost savings by only having a three-year license option. The change of address requirement also did not affect the local government budget. Also corrects a grammatical error. No money is associated with this change.
♦ SMALL BUSINESSES: This change would be a cost savings to small businesses. The change is in the fee schedule, no fees were raised, it was a cost savings by only having a three-year license option. The change of address requirement also did not affect small business. Also corrects a grammatical error. No money is associated with this change.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This change would be a cost savings to everyone. The change is in the fee schedule, no fees were raised, it was a cost savings by only having a three-year license option. The change of address requirement also did not affect anyone. Also corrects a grammatical error. No money is associated with this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no increased costs associated for anyone regulated by this rule, only a savings. The cost of the three-year license will be less than three one-year renewal licenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This administration supports these changes to the license fee structure, address requirement and the grammatical error correction of this rule amendment. There is no fiscal impact in regards to this change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Clair Allen by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at clairallen@utah.gov
♦ Clark Burgess by phone at 801-538-7188, by FAX at 801-538-7189, or by Internet E-mail at cburgess@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Leonard Blackham, Commissioner

R68. Agriculture and Food, Plant Industry.
R68-7. Utah Pesticide Control Rule.
R68-7-4. Classification of Pesticides.

The commissioner shall classify all pesticide products registered in Utah for "restricted-use" or "general-use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. The [e]Commissioner may also restrict the use of additional pesticides if it is found that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted-use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.

R68-7-7. Standards of Competence for Certification of Applicators.

Applicators must be at least 16 years of age and [~~show~~]demonstrate competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will

issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-[**4**]8 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(i) Persons conducting laboratory-type research involving pesticides; and

(ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(3) Private Applicators. Private applicators shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

(4) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his/her instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his/her supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he/she is needed.

(5) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

R68-7-8. Certification Procedures.

(A) Commercial Applicators.

(1) License Required. No person shall apply, advertise for, solicit, or hold oneself out as willing to engage
in the business of applying any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide business license as described in 4-14-13 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business license fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 5-9 commercial pesticide applicators and 10 or more commercial pesticide applicators.

(a) Application for such licenses shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed as a commercial applicator. An applicator and business license fee determined by the Department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification.

(b) A commercial pesticide applicator operating under more than one business identity or name from a single business location shall be licensed separately for each business identity or name.

(c) A commercial pesticide applicator with a single business identity or name but operating from more than one business location shall be licensed at each separate business location.

(d) If the name selected by an applicant for a license to act, operate, or do business or advertise as a commercial or noncommercial applicator in the State of Utah is the same or so near the same as that of another licensee already doing business in the state as to cause confusion in the minds of the people or is likely to deceive the public, the Department may require the applicant to apply for a license under a different name that is distinguishable from the names of existing licensees. Any determination made pursuant to this rule shall be at the sole discretion of the Department.

(e) Each business location licensed shall have a minimum of one certified applicator at that location who is certified in each licensed category for which applications are made.

(f) A franchised business shall have a separate license and a separate certified applicator at each business location.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department, pursuant to Subsection 4-2-2(2),

shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he/she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again; the original certification fee and any retesting fees will not be refunded.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the Department shall issue a commercial applicator's license. The license shall expire December 31 of [~~each~~]the third calendar year unless it has been revoked or suspended by the commissioner for cause, which may include any of the unlawful acts given in R68-7-[~~11~~]14. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following three calendar years.

(6) License [~~Renewal,~~]Recertification.

[~~(a) A license will be renewed without examination if the renewal notice is received by the Utah Department of Agriculture and Food prior to January 1 of any year.~~

~~(b) If the renewal notice is received after January 1 but before March 1, individuals will be required to pay the late fee, and no re-examination will be required.~~

~~(c) If the renewal notice is received after March 1, individuals will be required to recertify according to the original pesticide applicator certification procedures.~~

] (a) Each license shall expire on December 31 of the third calendar year of its issuance. [~~Commercial applicators may voluntarily pay a triennial license fee in lieu of the annual license fee.~~]Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

[~~(d)~~](b) Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide product as sold by the manufacturer) applied per unit area and total amount of diluted pesticide used;

(e) Purpose of application (target site and pest to be treated);

(f) The name, business address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(8) Exemption.

The provisions of this section relating to pesticide licenses and requirements for their issuance do not apply to private pesticide applicators using pesticides in the production of any agricultural commodity and applying pesticides for his/her neighbors provided he/she operates and maintains pesticide application equipment for his/her own use, is not engaged in the business of applying pesticides for hire or compensation in any form other than trading of services between producers of agricultural commodities, does not publicly represent himself/herself as a pesticide applicator, and operates his/her pesticide application equipment only in the vicinity of his/her owned or rented property; provided, however, that when he/she applies a restricted-use pesticide, he/she shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial

applicator's license issued by the Department. Application for such license shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the Department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he or she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again. The original certification fee and any retesting fees will not be refunded.

(3) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classification(s) applied for, the Department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application.

If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-[~~11~~]14. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(5) License Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

(a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;

(c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticide. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide concentrate product as sold by the manufacturer) applied per unit area, and total amount of diluted pesticide used;

(e) Purpose of application (target site and pest to be treated);

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice. Non-Commercial applicators engaged in public-health related activities are exempt from recording the name and address of property owners, but are required to document a detailed description of treatment areas by using such means as GPS coordinates or other locality descriptions for record keeping purposes.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the Department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the Department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons.

Application for a license shall be made in writing on a designated form obtained from the Department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first-time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the Department, by satisfying any of the following procedures or any other requirements specified by the Department.

(a) Completion of a recertification course approved by the Utah Department of Agriculture and Food and passing a written test with a score of 70% or above or;

(b) Complete the original certification process of taking the required written test(s). A score of 70 percent or above is required to pass or;

(c) Accumulate six credits of approved continuing education during the valid three years of certification.

(d) Records Maintained. Private applicators must keep and maintain records according to United States Department of Agriculture (USDA) requirements.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the Department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his/her credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The Department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

(F) Change of Licensee Information

(1) Every certified commercial, non-commercial, and private applicator shall notify the Department of any change in, but not limited to applicator's name, address, and phone number and/or change of employer within 30 calendar days of the change.

(2) Every commercial pesticide business licensee shall notify the Department of any changes in, including but not limited to, ownership, company name, owner or manager's name company address, and phone number within 30 calendar days of the change.

(a) Business licenses are nontransferable, and in case of a change in business ownership, a new application and fee are required.

R68-7-9. Dealer Licensing.

(A) In order to facilitate rules of the distribution and sale of restricted-use pesticides, it is necessary to license dealers who dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted-use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained a[~~an annual~~] license from the Department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into Utah shall obtain a pesticide dealer's license for his/her principal out-of-state location or outlet; provided further, that any

manufacturer, registrant or distributor who sells only through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the Department and shall be accompanied by a license fee determined by the Department pursuant to subsection 4-2-2(2). If the Department finds the applicant qualified to sell or distribute restricted-use pesticides and the applicant has paid the prescribed license fee, the Department shall issue a restricted-use pesticides dealer's license. [~~Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee.~~]This license shall expire December 31 of [~~each~~]the third calendar year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-[~~11~~]14.

(3) License Renewal. License-renewal fees are payable [~~annually~~]triennially before January 1. [~~Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee.~~]If the renewal of a pesticide dealer's license is not received prior to January 1 of [~~any one~~]the renewal year, an additional fee determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted-use pesticides is required by the Department to maintain a restricted-use pesticide sales register by entering all restricted-use pesticide sales into the register at the time of sale. The restricted-use pesticide sales register must be available in an electronic format approved by the Department. The electronic register form, shall include the following information:

(a) The Corporate or Company Name.

(b) The name of the branch store that made the sale.

(c) The store's complete Restricted-Use Pesticide dealer license number, including the prefix.

(d) The complete sale date including the month, day and year.

(e) The first and last name of the salesperson that made the sale.

(f) The first and last name of the buyer.

(g) The buyer's complete Pesticide Applicator License number, including the prefix.

(h) If the buyer was authorized by letter, the authorization letter must be kept on file.

(i) If the buyer used a temporary permit, a copy of the permit must be kept on file.

(j) The buyer's complete street address, city, state and zip code.

(k) The brand name of the product sold, its EPA Registration Number and the quantity sold.

(l) The product container size and its unit of measure (i.e. gallons, liters, etc.).

Such records shall be kept for a period of two years from the date of restricted-use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted-use pesticide dealer.

(5) Submission of Electronic records. On [~~June~~]July 1 of each year, Dealers are required to submit their Restricted-Use Pesticide sales records for the period starting the previous July 1 through June 30 of the current year. The due date for submission is July 31 of the current year.

(6) Exemption. Provisions of this section shall not apply to: (a) a licensed pesticide applicator who sells restricted-use pesticides only as an integral part of his/her pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application (b) Federal, state, county, or municipal agency which provides restricted-use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(7) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him/her in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

R68-7-10. Responsibilities of Business and Applicator.

(A) Business Licensee Duties and Responsibilities

(1) A business licensee shall ensure that a qualifying party (licensed applicator) of the business licensee receives the training that the applicator requires to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(B) Responsibility for business and employee(s)

(1) A business licensee, qualifying party and/or applicator may be held responsible for the acts or omissions of another person who is employed by the business licensee. It is the business' responsibility to properly train, equip, and prepare the other person(s) and maintain records of proper training and equipping.

(2) Failure to fully respond to requests by the commissioners designated agent, in a stated time, for information relating to training and equipping will be evidence for a failure to properly train or equip. The supervising licensee has the burden of proof by a preponderance of the evidence that the business licensee, qualifying party or applicator has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the commissioner.

(C) Use of business name and license number.

(1) A business licensee must prominently display the license issued by the Department at the primary business office and each branch office.

(2) A business licensee shall prominently display the business name and license number, as recorded on the license issued by the Department, on:

(a) Customer proposals or contracts for pest management services;

(b) Service records and service notifications;

(c) Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number is displayed on a service vehicle or trailer used in providing pest management services conforms to the following:

(i) Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the Department issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner.

(ii) Is in a color that contrasts with the color of the service vehicle and trailer;

(iii) Is prominently displayed on both sides of the service vehicle or trailer;

(iv) Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and

(v) Uses at least two-inch numbers for the license number.

(vi) Letters and numbers must be weatherproof.

(3) A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (2)[~~(d)~~](c). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (2)[~~(d)~~](c).

(4) When complying with subsection (2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

(D) Customer Notification.

(1) Prior to the time of each application of a restricted-use pesticide with a Danger/Danger-Poison signal word, the licensed commercial applicator or an employee of the licensed pesticide business shall provide the customer with a written statement containing the following information:

(a) Business name and telephone number of the licensed business.

(b) Name and license number of the licensed applicator who made the application

(c) Date and time of application.

(d) Type of pesticide application service and brand name of pesticide(s) applied.

(e) Instructions to the customer to contact the business telephone number if more specific information is desired regarding the pesticide product applied.

(2) The written statement required in subsection (1) shall be provided to the customer by any of the following means:

(a) Leave at the residence.

(b) In the case of a multiunit residence leave with the property manager or his/her authorized representative, or

(c) Mail to the property manager or his/her authorized representative if management is located at a location other than the pesticide application site, within seven (7) calendar days prior to the date of the pesticide application.

R68-7-12. Minimum Standards for Fumigant Applications.

(A) Application of fumigant products require strict adherence to the label and when required by the label, a verified and written Fumigation Management Plan (FMP) must be prepared in advance of treatment. A FMP must detail the information prescribed by the label. State standards for fumigation treatments of any space that can be occupied by a person, or non-target species, require the following:

(1) Persons present at the time of releasing the fumigant and during the initial ventilation.

(a) There shall be at least two persons, one of whom must be a certified applicator in the fumigation category, present at the time of the releasing of the fumigant and during the initial ventilation. During the interim, the premises shall be adequately safeguarded against entry by any person(s).

(2) Notification of local fire department and/or first responders.

(a) Prior to fumigation of any building or enclosed space, other than a fumigating vault, the certified applicator shall notify and provide the local fire department with the address of the fumigation job, time of gas release, kind of gas to be used, and beginning time of the aeration of the premises.

(3) Premises sealed.

(a) Premises to be fumigated shall be sealed in a manner that confines the fumigant to the space intended to be fumigated.

(4) Inspection of premises prior to releasing fumigant

(a) Immediately before releasing the fumigant, the fumigator shall conduct a thorough inspection of the premises to verify that no person(s) or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth below.

(5) Fumigation of apartments within a multiple unit apartment building.

(a) Fumigation of apartments within a multiple unit apartment building may be fumigated only after proper sealing of the area being fumigated and after all apartments are vacated.

(b) All the adjacent units shall be properly ventilated during the entire exposure period.

(6) Notification of all dwellings or places of business within 100 feet of building being fumigated.

(a) All dwellings or places of business within 100 feet of the building being fumigated must be notified in writing in advance of the fumigation.

(b) All premises within 10 feet must be vacated during the fumigation and aeration periods.

(7) Warning signs.

(a) Warning signs shall be posted conspicuously at all entrances of the premise to be fumigated and at the entrances of all adjacent multiple units and structures within 10 feet and kept there during the entire fumigation and ventilation period. Signs shall be a minimum size of 8-1/2 inches by 11 inches and color to be conspicuous and bearing the word "poison" and display the skull and cross-bones, the name of the fumigant used, and the name, address and telephone number of the fumigator.

(b) Before the fumigant is released, all entrances leading directly to the fumigated space shall be closed, sealed, and locked except exits to be used by fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.

(8) Masks worn.

(a) All members of the fumigating crew must be equipped with a serviceable mask of a type approved by the U.S. Mines, Safety, and Health Administration with correct canister for the type of gas used.

(b) Masks shall be worn while in the enclosed space during and after release of the gas, and until initial ventilation is completed.

(9) Re-entering fumigated premises

(a) No one other than the fumigator shall be permitted to re-enter the fumigated premises until the fumigator has ascertained by personal inspection, with gas mask
and with a chemical appropriate test, that the premises are safe for occupancy.

(b) Aeration must be conducted according to the product labeling and re-entry allowed according to levels specified on the label.

(10) Exceptions

(a) The subparts 1 through 9 may not apply to fumigants used to control insects or other pests outside of buildings, or for spot fumigations, or restrictive treatments inside a building, such as grain bins.

(i) Strict adherence to the label instructions must be adhered to during these applications.

(ii) During the ventilation period of a spot or restrictive fumigation, the premises shall not be occupied by anyone except the fumigator.

(iii) A warning gas is recommended where the fumigant is comparatively odorless.

(B) Fumigation of Burrowing Rodents require strict adherence to the label as well as a Fumigation Management Plan (FMP) that must contain the following information.

(1) Purpose of the application, indicate the exact pest to be controlled and the type of burrow system to be treated.

(2) Pesticide used. State the name of the pesticide, the EPA registration number, and dosage used.

(3) Property treated information. Record the property or facilities name and address. Verify the manager's name, and contact information.

(4) Licensed applicator information. Record licensed applicator's name, company, license number, phone numbers.

(5) Emergency Information. Note the phone number for the nearest hospital, fire department, police department, poison control center and the registrant of the fumigant.

(6) Instructions to personnel. Verify by signatures that all personnel has been instructed to:

(a) Report any accident or incident related to exposure, provide a telephone number for emergency response reporting.

(b) Report to proper authorities any theft of fumigant and/or equipment related to fumigation.

(7) Follow label directions. Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions are to be followed per label instructions.

(8) Burrowing Rodent Fumigation Record Keeping. Additional Standards.

(a) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as part of the record a diagram/graph (to scale) of the property treated that includes dimensions of the property, any structure present, and mark each burrow treated on the diagram or graph.

R68-7-13. Transportation, Storage, Handling, Using and Disposal of Pesticides and Pesticide Containers.

All pesticide applying entities shall provide a secure pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.

(1) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, other nontarget species, or the environment.

(2) Pesticide containers shall be secured during transport by use of side or end racks, bracing, chocks, tie downs, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(3) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Stacking or wedging against ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(4) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale, or transported and shall be handled or disposed of in a manner that would not injure humans, other nontarget species, or the environment. Pesticides with obscured, illegible or damaged labels shall not be displayed, offered for sale, or sold.

(5) No person shall distribute or sell any pesticide unless it is in the registrant's or manufacturer's unopened, original container and the registered pesticide label is affixed to the container

(6) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container, apparatus, or rinsate in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, humans, desirable plants and animals, or wildlife. Provided that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(7) No person shall pollute streams, lakes, or other water supplies during pesticide loading, mixing, and application. Adequate, functioning devices and procedures to prevent back siphoning shall be used.

(8) No pesticides shall be applied by aircraft or air blast sprayers to property abutting and/or adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination of these establishments or their premises.

(9) No person shall apply pesticides if weather conditions are such that physical drift or volatilization may cause damage to adjacent land, injure humans, other nontarget species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Generally accepted good housekeeping practices shall be maintained for all pesticides and their containers.

(b) The provisions of (d) and (e) of this subsection and subsection (11) of this section shall not apply to empty pesticide containers when adequately decontaminated (e.g., appropriate triple rinsing or other label approved cleaning techniques).

(c) For the purposes of (d) and (e) of this subsection and subsection (11) of this section, pesticides and their containers at the loading area shall not be considered unattended during the spraying operation if the operator maintains either visual control or

repeatedly returns at closely spaced intervals as to ensure safe monitoring of the pesticides and containers.

(d) Pesticides labeled with the signal word "danger/poison" and their containers shall be stored in a way which, when unattended, shall be so constructed and locked to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison," pesticides labeled with the signal word "warning" and pesticides labeled with the signal word "caution" and their containers shall be stored in secured storage out of the reach of children in an enclosure as described in (d) of this subsection: Provided that metal containers, twenty-eight gallons and larger, with tight screw-type bungs and/or secured or locked valves shall be considered secured storage.

(11) Requirements for posting of storage area for pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (Pesticide or Chemical) Storage Area/Keep Out" in at least two inch letters.

(b) Warning signs shall be posted:

[~~(i) On enclosures specified in subsection (6)(d) of this section;~~

] (i[~~i~~]) At each entrance or exit from a storage area and on each exterior wall, so that a sign is visible from any direction;

(ii[~~i~~]) If the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each entrance of the storage area.

(12) In accordance with State of Utah Agricultural Code, the Utah Department of Agriculture and Food hereby adopts the applicable portions of 40 CFR Part 152 Subpart A Section 152.3 and Part 165, Subparts A through E.

R68-7-14. Unlawful Acts.

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

(1) Made false, fictitious, or fraudulent claims, written or spoken misrepresenting the use, effect of pesticides, certification of applicator, or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of, advertised for, or held self out as applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Purchased, Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator or designated as a certified private applicators agent;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his/her agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.

(16) For an applicator to apply a termiticide at less than label rate.

(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide(s) before that individual has successfully completed the prescribed pesticide certification procedures.

(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food or follow the rules set forth in section R68-7-[~~10~~]8 for licensing of a commercial business.

(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.

(22) Refused or neglected to comply with the Federal Container and Containment regulations.

(23) Failure to perform fumigation applications according to the standards required by this rule.

(24) Failed to display business license numbers in accordance with this rule.

(25) Refused or neglected to notify the customer of the application of a restricted-use pesticide and the information detailed in R68-7-10.

(26) Failure of a qualifying party of the business licensee to train or prepare the applicator to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(27) Failure to timely and fully respond to requests by the commissioners designated agent for information relating to training and equipping of applicators.

(28) Transported, stored, handled, used, or disposed of a pesticide or pesticides container inconsistent with rules specified in section R68-7-13.

KEY: inspections, pesticides
Date of Enactment or Last Substantive Amendment: [~~January 4, 2010~~]2011
Notice of Continuation: March 2, 2011
Authorizing, and Implemented or Interpreted Law: 4-14-6

Commerce, Administration
R151-3
Americans With Disabilities Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34752
FILED: 04/29/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing simplifies and updates the Department's ADA procedures, referencing a recent rule change by the Utah Division of Risk Management and deleting a reference to a committee no longer in existence.

SUMMARY OF THE RULE OR CHANGE: This rule filing simplifies and updates the Department's ADA procedures, referencing a recent rule change by the Utah Division of Risk Management and deleting a reference to a committee no longer in existence.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-3-201(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment has no impact to the state budget. It clarifies and updates existing language.
♦ LOCAL GOVERNMENTS: This amendment does not impact local governments. The complaint procedure is available to individuals, not local governments.
♦ SMALL BUSINESSES: This amendment does not impact small businesses. The complaint procedure is available to individuals, not small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment imposes no cost or savings to persons other than small businesses, businesses, or local government entities. The amendment clarifies and updates existing language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment makes no change in compliance costs for affected persons. The amendment clarifies and updates existing language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no fiscal impact on businesses. It provides a procedure for individuals to follow to file an ADA complaint with the Department.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.
R151-3. Americans With Disabilities Act Rule[s].
R151-3-1. Authority and Purpose.

(1) This rule is made under Section 13-1-6 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Commerce, as a public entity that employs more than 50 persons, adopts and publishes these procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act (ADA), as amended.

(2) This rule implements 28 CFR 35 which implements Title II of the ADA, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department, because of a disability.[~~adopted pursuant to federal regulation (28 CFR 35.107) to provide procedures for the prompt and equitable resolution of complaints filed in accordance with 42 U.S.C. 12201. Title II of that federal statute provides no qualified individual with a disability, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by this or any such entity. This rule also is adopted pursuant to Subsection 63G-3-201(2).~~]

R151-3-2. Procedures.

Any complaints for noncompliance with Title II of the ADA shall be governed by the procedures set forth in Sections R13-3-2 through 8, as adopted by the Utah Department of Administrative Services and its Division of Risk Management.[**~~Definitions.~~**

~~(1) "The ADA Coordinator" means the department's coordinator or his designee who has responsibility for investigating~~

and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(2) "The ADA State Coordinating Committee" means the committee appointed or authorized by the governor to oversee the ADA coordinators of the various state agencies.

(3) "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(4) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(5) "Individual with a disability" (hereinafter "individual") means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

(6) "Department" means the Department of Commerce, its divisions, commissions or boards, or any other instrumentality of the department.

R151-3-3. Filing of Complaints.

(1) Any individual who believes the department has discriminated against him in violation of 42 U.S.C. 12201 or regulations thereunder may file a complaint with the department.

(2) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.

(3) The complaint shall be filed with the department's ADA Coordinator in writing, or in another accessible format suitable to the individual.

(4) Each complaint shall:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired by the individual; and

(e) be signed by the individual or his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R151-3-4. Investigation of Complaint.

(1) The ADA Coordinator shall investigate each complaint received to the extent necessary to assure that all relevant facts are determined. This may include gathering all information listed in R151-3-3 (4) if it is not made available by the individual.

(2) When conducting the investigation and preparing a decision, the ADA Coordinator may consult the department's, or the state's legal, human resource, and budget staffs in determining what action, if any, should be recommended. Before making any decision that would involve the following, the ADA Coordinator shall consult with the ADA State Coordinating Committee:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority; or

(b) facility modifications; or

(c) reclassification or reallocation in grade.

R151-3-5. Issuance of Decision.

(1) Within 20 working days after receiving the complaint, the ADA Coordinator shall issue a decision in writing or other suitable format stating what action, if any, should be taken by the department on the complaint.

(2) If the ADA Coordinator is unable to reach a decision within 20 working days, he shall notify the individual in writing or other suitable format why the decision is being delayed and what additional time will be needed to reach a decision.

(3) Decisions shall include a statement of the individual's right of further appeal, if any.

R151-3-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be in writing and filed with the executive director of the department, or his designee, other than the ADA Coordinator.

(3) The filing of an appeal shall be considered as authorization by the individual to allow access to all information, including information classified as private, protected or controlled, by the executive director or his designee.

(4) The appeal shall describe in sufficient detail the reasons the individual believes the ADA Coordinator's decision was in error, incomplete, ambiguous, or otherwise improper, and the relief sought on appeal.

(5) The executive director or his designee shall issue a written decision stating the reasons for his conclusions and recommendations. Additional investigation may be conducted if necessary to clarify questions of fact. The executive director shall comply with the provisions of R151-3-4 (2) in reaching a decision.

(6) The decision shall be issued within ten working days after receiving the appeal, and shall be in writing or in another accessible format suitable to the individual.

(7) If the executive director or his designee is unable to reach a decision within ten working days, he shall notify the individual in writing or in another acceptable format why the decision is being delayed and the additional time needed to reach a decision.

R151-3-7. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected under Section 63-2-304 until the ADA Coordinator or executive director issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private or controlled. All other information gathered as part of the complaint record shall be classified as private. Only the written decision of the ADA Coordinator or the executive director shall be public.

~~R151-3-8. Relationship to Other Laws.~~

~~This rule does not prohibit or limit the use of remedies available to individuals under the provisions of the Utah Antidiscrimination Act; 28 CFR Subpart F, Part 35.170 et seq., 1991 edition, which governs Federal ALA Complaint Procedures or any other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.~~]

KEY: disabilities, complaints, grievances[~~developmentally disabled, physically handicapped persons~~]
Date of Enactment or Last Substantive Amendment: [~~1993~~]2011
Notice of Continuation: May 1, 2007
Authorizing, and Implemented or Interpreted Law: 13-1-6; [~~63G-2-304;~~]63G-3-201(2)

Governor, Economic Development
R357-5
Motion Picture Incentive Fund

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 34762
FILED: 05/02/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish the standards that a motion picture company and/or a digital media company must meet to qualify to receive a post-performance incentive. This amendment is being filed to address H.B 99 from the 2011 General Session of the Utah State Legislature which changed certain parts of the Motion Picture Incentive Fund and added an incentive for digital media projects. (DAR NOTE: H.B. 99 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: This rule establishes the standards companies must meet to qualify to receive an incentive for a motion picture project and/or digital media project.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63M-1-1804

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no immediate anticipated costs or savings to the state budget due to this rule. However, should companies receive an incentive, a tax credit will be paid out based on the criteria outlined in the rule which can result in costs to the state. It is worth noting that this incentive is post-performance and the percentage paid out is less than a company actually pays in to the economy.

♦ LOCAL GOVERNMENTS: There are no immediate anticipated costs or savings to local government. However, should these companies receive an incentive and do a project in Utah, the local government(s) where they decide to do their projects should greatly benefit economically.
♦ SMALL BUSINESSES: There are no direct anticipated costs or savings on small businesses. However, many small businesses will positively benefit from projects done by these companies due to increased wages, travel, dining, lodging, and other expenditures.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no direct anticipated costs or savings to persons other than small businesses. However, once projects are approved they could result in positive economic benefits for all persons in the state of Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The motion picture incentive fund is used by the State of Utah to attract motion picture and television productions as well as digital media projects to do business in the state. Having these productions and projects will result in positive impacts to Utah's economy. The previous five-year cumulative fiscal impact from productions of the Motion Picture Incentive, from 2005 to 2010, equaled $164,000,000 and 4,474 jobs. That was the result of 51 total productions and 1,687 production days.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT
324 S STATE
5TH FLOOR
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hartley by phone at 801-538-8743, by FAX at 801-538-8888, or by Internet E-mail at ghartley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Spencer Eccles, Executive Director

R357. Governor, Economic Development.
R357-5. Motion Picture Incentive Fund.
R357-5-1. Authority.

(1) Subsection 63M-1-1804 requires the office to make rules establishing the standards that a motion picture company, and

digital media, company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive under Part 18 of the Utah Code Annotated.

R357-5-2. Definitions.

(1) Terms in these rules are used as defined in UCA 63M-1-1802.

R357-5-3. Motion Picture Incentive Conditions -- Motion Picture Company.

(1) A motion picture company may qualify for a motion picture incentive under Part 18 only if:

(a) the motion picture company is producing a production within the state that is:

(i) a television series; or

(ii) a made-for-television movie; or

(iii) a motion picture, including feature films and independent films; and

(b) the motion picture company has obtained financing and financing is in place for the production; and

(c) the economic impact of the production's dollars left in the state represents new incremental economic activity in the state; and

(d) as of the motion picture incentive application date, as determined the office, has not started principle photography of the production in the state; and

(e) is a state-approved production.

(2) The office may give preference to a production that:

(a) stimulates economic activity in rural areas of the state; or

(b) has Utah content, such as recognizing that a production was made in the state or uses Utah as Utah in the production.

(3) The office, with advice from the board, may enter into an agreement with a motion picture company authorizing a motion picture incentive if the motion picture company meets the standards under subsection (1) and:

(a) the motion picture incentive does not exceed 20% of the dollars left in the state by the motion picture company; and

(b) if post-performance cash, the post-performance cash motion picture incentive does not exceed $500,000 per production under Part 18 and is issued in accordance with Part 18; and

(c) if a post-performance refundable tax credit, the post-performance refundable tax credit certificate is issued in accordance with Part 18 and Section 59-7-614.5 or 59-10-1108; and

(d) the motion picture incentive amount approved for the motion picture production follows the motion picture incentive application policy established by the office, which shall be posted on the office's public website.

(4) A motion picture company may be eligible for an additional 5% post-performance refundable tax credit motion picture incentive, in addition to the 20% post-performance refundable tax credit motion picture incentive under subsection (3) if:

(a) the motion picture company employs a significant, as determined by the office, percentage of cast and crew from Utah; or

(b) highlights the State of Utah and the Utah Film Commission in the motion picture production credits; or

(c) other promotional opportunities as agreed upon by the office and the motion picture company; and

(d) the total motion picture incentive granted to the motion picture company for a state-approved motion picture production does not exceed 25% of the dollars left in state.

(5) A motion picture company is eligible for a motion picture incentive only if the office has entered into an agreement under subsection (3) with the motion picture company under Part 18.

R357-5-4. Motion Picture Incentive Conditions -- Digital Media Company.

(1) A digital media company may qualify for a motion picture incentive under Part 18 only if:

(a) the digital media project is producing all or part of production within the state that is:

(i) an interactive entertainment production; or

(ii) an animated production; and

(b) the digital media company has obtained financing and financing is in place for the production; and

(c) the economic impact of the digital media project's new state revenue represents new incremental economic activity in the state; and

(d) is produced for distribution in commercial or education markets, which shall include projects intended for Internet or wireless distribution; and

(e) as of the motion picture incentive application date, as determined the office, has not started project production in the state; and

(f) is a state-approved production.

(2) The office, with advice from the board, may enter into an agreement with a digital media company authorizing a motion picture incentive if the digital media company meets the standards under subsection (1) and (2) and:

(a) the motion picture incentive does not exceed 20% of the new state revenue paid by the digital media company; and

(b) does not exceed 20% of the dollars left in state by the digital media company; and

(c) is in the form of a post-performance refundable tax credit certificate under Part 18 and under Section 59-7-614.5 or 59-10-1108; and

(d) economic modeling is considered to evaluate the costs and benefits of the digital media project to the state and local governments in determining the motion picture incentive amount; and

(e) the motion picture incentive amount approved for the digital media production follows the motion picture incentive application policy established by the office, which shall be posted on the office's public website.

(3) A digital media company is eligible for a motion picture incentive only if the office has entered into an agreement under subsection (2) with the digital media company under Part 18.

R357-5-5. Funding -- Post-Performance Refundable Tax Credit.

(1) The office may issue up to $6,793,700 in post-performance refundable tax credit certificates under 59-7-614.5 or 59-10-1108 in a fiscal year to either a motion picture, or digital media, company.

(2) If the office does not issue post-performance refundable tax credit certificates in a fiscal year totaling the amount authorized under Part 18, it may carry over that amount for issuance in subsequent fiscal years.

(3) Post-performance refundable tax credits are nontransferable and can only be issued to the state-approved motion picture, or digital media, company who submits the motion picture incentive application and is approved by the office with advice from the Board.

R357-5-6. Funding -- Post-Performance Cash.

(1) The office may only issue funds appropriated by the state legislature to the restricted account created with the general fund known as the Motion Picture Incentive Account to a motion picture company.

(2) Post-performance cash is nontransferable and can only be issued to the state-approved motion picture company who submits the motion picture incentive application and is approved by the office with advice from the Board.

KEY: economic development, motion picture, digital media, new state revenue
Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Law: 63M-1-1804

Health, Epidemiology and Laboratory Services, Environmental Services
R392-510
Utah Indoor Clean Air Act

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34733
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the proposed change is to clarify the intent of the Utah Indoor Clean Air Act (UICAA) in regards to use of tobacco which is not under self-sustained combustion, but is heated.

SUMMARY OF THE RULE OR CHANGE: The proposed changes clarify the definition of "lighted tobacco" to include tobacco products that may be heated and smoked in places of public access. The proposed language places the use of heated tobacco under the same restrictions as the use of tobacco that is under self-sustained combustion in places of public access.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-1 et seq. and Subsection 26-1-30(2) and Title 26, Chapter 38

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs or savings to the current state budget. State agencies have no direct enforcement responsibility for this rule, thus no cost is expected.

♦ LOCAL GOVERNMENTS: There will be an increase in costs to local health departments (LHDs) which will have the responsibility of enforcement of the UICAA. As enforcement of the UICAA is done mainly on a "complaint" basis, the actual cost is not possible to determine as it is unclear how many complaints may be received by the LHDs. Based on input from LHDs, we are only aware at this time of a few places of public access where smoking using heated tobacco is occurring. Some counties have already passed regulations prohibiting the use of heated tobacco.

♦ SMALL BUSINESSES: Businesses that allow the use of heated tobacco will be severely affected for that portion of their business based on the use of heated tobacco products. Businesses who provide other services, such as food preparation, will be impacted, but it is difficult to put an exact cost on this. As stated above, the number of facilities who will be impacted is small as some counties already have passed regulations prohibiting the use of heated tobacco products. Others have denied business permits to those businesses who would allow the use of heated tobacco products.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Businesses that allow the use of heated tobacco will be severely affected for that portion of their business based on the use of heated tobacco products. Businesses who provide other services, such as food preparation, will be impacted, but it is difficult to put an exact cost on this. As stated above, the number of facilities who will be impacted is small as some counties already have passed regulations prohibiting the use of heated tobacco products. Others have denied business permits to those businesses who would allow the use of heated tobacco products.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons are difficult to determine. However, a facility which relies on revenue from providing a place to smoke heated tobacco will be severely impacted. The number of projected violations is not known, but is deemed to be low statewide, based on the estimated number of facilities. A cost would only be incurred if there were to be a dispute whether or not a product being smoked contained tobacco. Sample analyses could run a few hundred dollars per analysis.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no question that businesses that currently permit the use of heated tobacco products will have to change a portion

of their business model, if this rule takes effect. Based on public and scientific input received to date, I am persuaded that the impact on the public's health by permitting the use of heated tobacco products in a public place, greatly outweighs any fiscal impact.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/06/2011 03:00 PM, Cannon Health Building, 288 N 1460 W, Room 125, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-510. Utah Indoor Clean Air Act.
R392-510-2. Definitions.

The definitions in Section 26-38-2 apply to this rule in addition to the following:

(1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.

(2) "Area" means a three dimensional space.

(3) "Building" means an entire free standing structure enclosed by exterior walls.

(4) "Building owner" means the person(s) who has an ownership interest in any public or private building.

(5) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons.

(6) "Enclosed" means space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows or similar structures (exclusive of doors and passageways) which extend from the floor to the ceiling.

(7) "Executive Director" means the Executive Director of the Utah Department of Health or his designee.

(8) "Facility" means any part of a building, or an entire building.

(9) "HVAC system" means the collective components of a heating, ventilation and air conditioning system.

(10) "Lighted Tobacco" means both tobacco that is under self sustained combustion and tobacco that is heated to a point of smoking or vaporizing.

(1[~~0~~]1) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or his designee.

(1[~~1~~]2) "Nonsmoker" means a person who has not smoked a tobacco product in the preceding 30 days.

(1[~~2~~]3) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.

(1[~~3~~]4) "Place" means any "place of public access", or "publicly owned building or office", as defined in Title 26, Chapter 38.

(15) "Smoking" means the possession of any lighted tobacco product in any form.

(1[~~4~~]6) "Workplace" means any enclosed space, including a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship. This includes such places wherein individuals gratuitously perform services for which individuals are ordinarily paid.

R392-510-5. Smoking Prohibited Entirely in Places of Public Access and Publicly Owned Buildings and Offices.

(1) Places listed in Section 26-38-2(1)(a) through (p) are places of public access and smoking is prohibited in them except as provided for in Section 26-38-3(2).

(2) It is the responsibility of the owner or operator to provide evidence to the local health department upon request that the facility is in compliance with this rule.

R392-510-12. Signs and Public Announcements.

Signs required in this section must be easily readable and must not be obscured in any way. The words "No Smoking" must be not less than 1.5 inches in height. If the international "No Smoking" symbol is used alone, it must be at least 4 inches in diameter.

(1) In a place where smoking is prohibited entirely, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted in this establishment" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(2) In a place where smoking is partially allowed, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted except in designated areas" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(3) In a place where smoking is allowed in its entirety, the building owner, agent, or operator must conspicuously post a sign using the words, "This establishment is a smoking area in its entirety" or similar statement.

(4) The building owner, agent, or operator must post a sign at all smoking-permitted areas provided for under Section 26-38-3(2)(a), (b), and (c). The sign must have the words, "smoking permitted" or similar wording and include the international smoking symbol.

(5) The building owner, agent, or operator must post a sign inside the exit of all smoking-permitted areas, if the exit leads to a smoking-prohibited area. The sign must have the words, "smoking not permitted beyond this point" or similar wording and include the international no-smoking symbol.

(6) In public lodging facilities that designate guest rooms as smoking allowed, the building owner, agent, or operator must conspicuously post a permanent sign on the smoking-allowed guest room door and meet the requirements of R392-510-6(1) and (2).

(7) In nursing homes, assisted living facilities, small health care facilities and hospitals with a certified swing-bed program that designate private residential sleeping rooms as "smoking allowed," the building owner, agent, or operator must conspicuously post a permanent sign on the door and meet the requirements of R392-510-6(1) and (2).

(8) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place must provide announcements on a public address system as often as necessary but not less than four times per hour during the hours that the place is open to the public, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(9) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place must provide announcements on a public address system prior to the beginning of any event, at intermissions, at the conclusion of the event and any other break in the program or event, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(10) The building owner, agent, or operator of a large place, such as an airport, university, hotel or motel, or sports arena may, in writing, request the assistance of the local health officer to establish an effective signage and public announcements plan. The local health officer may cause the plan to be modified at any time to protect nonsmokers from being exposed to tobacco smoke.

(11) Buildings that are places of worship operated by a religious organization are not required to post signs.

(12) In a place of public access where the smoking of non-tobacco products is allowed and smoking of tobacco is prohibited, a sign shall be posted indicating that tobacco products may not be smoked.

KEY: public health, indoor air pollution, smoking, ventilation
Date of Enactment or Last Substantive Amendment: [~~October 31, 2007~~|2011
Notice of Continuation: April 23, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-1 et seq.; 26-38-1

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-401-3
Assessment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34767
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Legislature through H.B. 482 (2011 General Session) increased appropriations for this program through an increase to the assessment on Medicaid beds in nursing facilities. This change implements that assessment increase. (DAR NOTE: H.B. 482 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), non-intermediate care facilities for the mentally retarded are assessed at the uniform rate of $12.75 per patient day, which is an increase from the previous $12.25 per patient day assessment. 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 R414-401-3(2), intermediate care facilities for the mentally retarded (ICF/MR) are assessed at the uniform rate of $6.94 per patient day, which is an increase from the previous $6.53 per patient day assessment. These updates are based on estimates of patient days for state fiscal year 2012 and the appropriation amounts from the Hospital Provider Assessment Special Revenue Fund.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-18-3 and Title 26, Chapter 35a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This is anticipated to result in collection of an additional $1,870,600 restricted funds from nursing and swing bed facilities resulting in an additional $4,584,200 federal funds. This will result in an additional $6,454,800 in reimbursement to nursing home and swing bed facilities. The update to the ICF/MR assessment rate is anticipated to be budget neutral as it updates the collection

rate based on projected days in state fiscal year 2012 and the appropriation amount from the Hospital Provider Assessment Special Revenue Fund.
♦ LOCAL GOVERNMENTS: Local hospitals with swing beds may realize increased revenue, as a result of the increased reimbursement monies available. Funding will be applied to swing bed reimbursement rates beginning in calendar year 2012. 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: Small nursing facility providers will realize a net enhanced revenue as a result of increased federal matching funds. In addition, there would be an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. ICF/MR facilities will realize an increased cost based upon the increase in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the additional revenue or cost that will be realized by these facilities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Medicaid nursing facility providers will realize a portion of the net enhanced revenue as a result of increased federal matching funds. In addition, there would be an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. ICF/MR facilities will realize an increased cost based upon the increase in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the additional revenue or cost that will be realized by these facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of $0.50 per non-Medicare patient day from each nursing facility and $0.41 per qualifying patient day for the ICF/MR providers. These assessment monies are used to draw down federal matching funds that result in higher reimbursement rates than would be possible without the assessment monies. All Medicaid certified nursing and swing bed facilities have benefited from this process. The amount of overall gain depends on the number of Medicaid patients in the facility. In addition, there would be an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule adjusts the assessment on nursing facilities. This change reflects 2011 appropriations and the phase out of federal subsidies. The net impact on business is positive, although the impact on each facility is variable.
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 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
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 [~~$12.25~~]$12.75 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~~]$6.94 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.

KEY: Medicaid, nursing facility
Date of Enactment or Last Substantive Amendment: July 1, 2010
Notice of Continuation: June 25, 2009
Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

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

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34766
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the Quality Improvement Incentive programs for state fiscal year 2012. It also simplifies the rule by removing language that is repeated in both this rule and Attachment 4.19-D of the Utah Medicaid State Plan. The Utah Medicaid State Plan is a federal requirement outlining how the Medicaid program operates in a state.

SUMMARY OF THE RULE OR CHANGE: This amendment removes language regarding the calculation of rates for nursing facilities; Quality Improvement Incentive programs for nursing care facilities and intermediate care facilities for the mentally retarded in state fiscal year 2012 and replaces it with references to Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Title 26, Chapter 35a

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: The aggregate amount that the Department pays to Medicaid-certified nursing homes does not change. This amendment impacts small and large businesses equally. 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 amount that the Department pays 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 and the references to the Utah Medicaid State Plan do not alter the operation of the program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Implementation of the current incentive program authorized by this rule will have a positive 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 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

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

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by Section R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

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

(6) Property costs are paid separately from the RUGS rate.

(7) Reimbursement for nursing home rates is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.[~~Property costs shall be calculated once per year, each July 1, and reimbursed as a component of the facility rate based on an FRV System.~~

~~(a) Under this FRV system, the Department reimburses a facility based on the estimated value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent or lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.~~

~~(i) The initial age of each nursing facility used in the FRV calculation is determined as of September 15, 2004, using each facility's initial year of construction.~~

~~(ii) The age of each facility is adjusted each July 1 to make the facility one year older.~~

~~(iii) The age is reduced for replacements, major renovations, or additions placed into service since the facility was built, as reported on the FRV Data Report, provided there is sufficient documentation to support the historical changes.~~

~~(A) If a facility adds new beds or replaces existing beds, these beds are averaged into the age of the original beds to arrive at the facility's age. Bed additions and bed replacements must be completed within a 24-month period and be reported on an FRV Data Report for the reporting period used for the July 1 rate year.~~

~~(B) If a facility completed a major renovation, the cost of the project is represented by an equivalent number of new beds.~~

~~(I) The renovation must have been completed during a 24-month period and reported on an FRV Data Report for the reporting period used for the July 1 rate year and be related to the reasonable functioning of the nursing facility. Renovations unrelated to either the direct or indirect functioning of the nursing facility shall not be used to adjust the facility's age.~~

~~(II) The equivalent number of new beds is determined by dividing the cost of the project by the accumulated depreciation per bed of the facility's existing beds immediately before the project.~~

~~(III) The equivalent number of new beds is then subtracted from the total actual beds. The result is multiplied by the difference in the year of the completion of the project and the age of the facility, which age is based on the initial construction year or the last reconstruction or renovation project. The product is then divided by the actual number of beds to arrive at the number of years to reduce the age of the facility.~~

~~(b) A nursing facility's fair rental value per diem is calculated as follows:~~

~~As used in this subsection (b), "capital index" is the percent change in the nursing home "Per bed or person, total cost" row and "3/4" column as found in the two most recent annual R.S. Means Building Construction Cost Data as adjusted by the weighted average total city cost index for Salt Lake City, Utah.~~

~~(i) The buildings and fixtures value per licensed bed is $50,000, which is based upon a standard facility size of at least 450 square feet determined using the R.S. Means Building Construction Cost Data adjusted by the weighted average total city cost index for Salt Lake City, Utah. To this $50,000 is added 10% ($5,000) for land and 10% ($5,000) for movable equipment. Each nursing facility's total licensed beds are multiplied by this amount to arrive at the "total bed value." The total bed value is trended forward by multiplying it by the capital index and adding it to the total bed value to arrive at the "newly calculated total bed value." The newly calculated total bed value is depreciated, except for the portion related to land, at 1.50 percent per year according to the weighted age of the facility. The maximum age of a nursing facility shall be 35 years. There shall be no recapture of depreciation. The base value per licensed bed is updated annually using the R.S. Means Building Construction Cost Data as noted above. Beginning July 1, 2008, the 2007 base value per licensed bed is used for all facilities, except facilities having completed a qualifying addition, replacement or major renovation. These qualifying facilities have that year's base value per licensed bed used in their FRV calculation until an additional qualifying addition, replacement or major renovation project is completed and reported, at which time the base value is updated again.~~

~~(ii) A nursing facility's annual FRV is calculated by multiplying the facility's newly calculated bed value times a rental factor. The rental factor is the sum of the 20-year Treasury Bond Rate as published in the Federal Reserve Bulletin using the average for the calendar year preceding the rate year and a risk value of three percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than nine percent or more than 12 percent.~~

~~(iii) The facility's annual FRV is divided by the greater of:~~

~~(A) the facility's annualized actual resident days during the cost reporting period; and~~

~~(B) for rural providers, 65 percent of the annualized licensed bed capacity of the facility and, for urban providers, 85 percent of the annualized licensed bed capacity of the facility.~~

~~(iv) The FRV per diem determined under this fair rental value system shall be no lower than $8.~~

~~(c) A pass-through component of the rate is applied and is calculated as follows:~~

~~(i) The nursing facility's per diem real property tax and real property insurance cost is determined by dividing the sum of the facility's allowable real property tax and real property insurance costs, as reported in the most recent FCP or FRV Data Report, as applicable, by the facility's actual total patient days.~~

~~(ii) For a newly constructed or newly certified facility that has not submitted an FCP or FRV Data Report that would be used in the rate period, the per diem real property tax and real property insurance is the state average daily real property tax and real property insurance cost of all facilities.~~

~~(8) Newly constructed or newly certified facilities' case mix component of the rate shall be paid using the average case mix index. This average case mix index remains in place until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2). At the following quarter's rate setting, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(7).~~

~~(9) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter.~~

~~(a) The subsequent quarter's case mix index is established using the prior ownership facility MDS data until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2).~~

~~(b) The property component is calculated for the facility at the beginning of the next state fiscal year, as noted in R414-504-3(7).~~]

[~~(10)~~](8) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

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

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

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

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

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

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

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

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

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

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

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

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

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

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

[~~(11)~~](9) A provider may challenge the rate set pursuant to this rule using the appeal in Rule R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

[~~(12)~~](10) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

[~~(13)~~](11) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

[~~(14)~~](12) Withholding of Title XIX payments

(a) The Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within ten business days to requests for information relating to desk review or audit findings relating to the facility's submitted FCP or FRV Data Report.

(b) For ongoing operations, the Department will provide notice before withholding payments. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180 days.

(c) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle.

R414-504-4. Quality Improvement Incentive.

Reimbursement for Nursing Home Quality Improvement Incentives is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

~~[(1) The incentive period is from July 1, 2010 through May 31, 2011.~~

~~(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 2011 for use in state fiscal year 2011.~~

~~(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, 2009, and May 31, 2011.~~

~~(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) Reimbursement for the ICF/MR Quality Improvement Incentive is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.[~~The incentive period is from July 1, 2010, through May 31, 2011.~~

~~(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, 2010~~|2011
Notice of Continuation: December 12, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-35a

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Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34741
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A definition for "break in service" is added. The definition for "job series" is expanded to align with current practice. "Tangible Employment Action" is simplified for clarity.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-1-1(16) adds "break in service" definition. In Subsection R477-1-1(62), "job series" is expanded to include jobs with different titles in the same functional area. In Subsection R477-1-1(99), "Tangible Employment Action" is simplified. Subsections are renumbered and alphabetized as necessary.

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 government.
♦ 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. This rule has no financial impact on state employees.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

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 based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) Administrative Salary Increase: An increase in the current actual wage 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.

(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.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(1[~~6~~]7) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(1[~~7~~]8) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(1[~~8~~]9) Career Mobility: A time limited assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

([~~19~~]20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(2[~~0~~]1) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(2[~~1~~]2) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(2[~~2~~]3) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(2[~~3~~]4) Category of Work: A job series within an agency 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.

(2[~~4~~]5) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(2[~~5~~]6) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(2[~~6~~]7) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(2[~~7~~]8) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(2[~~8~~]9) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

([~~29~~]30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(3[~~0~~]1) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(3[~~1~~]2) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(3[~~2~~]3) 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.

(3[~~3~~]4) DHRM: The Department of Human Resource Management.

(3[~~4~~]5) 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.

(3[~~5~~]6) 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.

(3[~~6~~]7) Disciplinary Action: Action taken by management under Rule R477-11.

(3[~~7~~]8) Dismissal: A separation from state employment for cause under Section R477-11-2.

(3[~~8~~]9) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

([~~39~~]40) 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.

(4[~~0~~]1) 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.

(4[~~1~~]2) "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.

(4[~~2~~]3) 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.

(4[~~3~~]4) 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.

(4[~~4~~]5) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(4[~~5~~]6) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(4[~~6~~]7) 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.

(4[~~7~~]8) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(4[~~8~~]9) 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~~]50) 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 Office.

(51) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(5[~~0~~]2) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(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) driver license

[~~(51) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.~~

] (5[~~2~~]3) 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.

(5[~~3~~]4) HRE: Human Resource Enterprise; the state human resource management information system.

(5[~~4~~]5) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(5[~~5~~]6) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(5[~~6~~]7) 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.

(5[~~7~~]8) 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.

(5[~~8~~]9) 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 is applied to each position in the group.

([~~59~~]60) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(6[~~0~~]1) Job Requirements: Skill requirements defined at the job level.

(6[~~1~~]2) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(6[~~2~~]3) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(6[~~3~~]4) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(6[~~4~~]5) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(6[~~5~~]6) Market Comparability Adjustment: Legislatively approved change to a salary range for a job based on a compensation survey conducted by DHRM.

(6[~~6~~]7) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(6[~~7~~]8) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(6[~~8~~]9) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

([~~69~~]70) Nonfeasance: Failure to perform either an official duty or legal requirement.

(7[~~0~~]1) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(7[~~1~~]2) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(7[~~2~~]3) 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.

(7[~~3~~]4) 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.

(7[~~4~~]5) 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.

(7[~~5~~]6) 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 Office, or the classification appeals procedure.

(7[~~6~~]7) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(7[~~7~~]8) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(7[~~8~~]9) Position Identification Number: A unique number assigned to a position for FTE management.

([~~79~~]80) 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 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 there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(8[~~0~~]1) Preemployment Drug Test: A drug test conducted on:

(a) final candidates for a highly sensitive position;

(b) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(c) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(8[~~1~~]2) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(8[~~2~~]3) 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.

(8[~~3~~]4) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(8[~~4~~]5) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(8[~~5~~]6) 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.

(8[~~6~~]7) 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.

(8[~~7~~]8) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

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

([~~89~~]90) 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.

(9[~~0~~]1) 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.

(9[~~1~~]2) 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.

(9[~~2~~]3) 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.

(9[~~3~~]4) 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.

(9[~~4~~]5) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(9[~~5~~]6) Salary Range: An established minimum salary rate and maximum salary rate assigned to a job.

(9[~~6~~]7) 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).

(9[~~7~~]8) 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.

(9[~~8~~]9) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits. [~~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~~].

([~~99~~]100) 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.

(10[~~0~~]1) 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.

(10[~~1~~]2) 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.

(10[~~2~~]3) 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.

(10[~~3~~]4) 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.

(10[~~4~~]5) 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: [~~August 9, 2010~~]2011
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.: 34742
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Extensive amendments are made to reduce unnecessary information and requirements regarding records.

SUMMARY OF THE RULE OR CHANGE: Amendments to Section R477-2-5 remove lists of records to be maintained. Language is added to reinforce confidentiality of medical records in Subsection R477-2-5(3). Various nonsubstantive corrections are made.

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 other than reducing potential costs for future physical storage of records.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ 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. This rule does not impact costs or savings to state employees.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jeff Herring , Executive Director

R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-3. Fair Employment Practice.

All state personnel actions 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 Labor Commission 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.

R477-2-5. 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 applicable federal laws. DHRM 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;

(c) records of actions affecting employee salary history, classification history, title and salary range, 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, notices of performance improvement plans or disciplinary actions, performance evaluations, 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;~~]

(3) DHRM shall maintain, on behalf of agencies, a[~~separate~~] confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.[~~for each of the following:~~

~~(a) Medical Records: all information pertaining to medical issues, including documents for Family Medical and Leave Act, workers compensation, long-term disability, medical and dental enrollment forms containing health related information, health statements, and applications for additional life insurance.~~

~~(i) This information is private, controlled, or exempt in accordance with Title 63G-2.~~

~~(b) ADA 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 Records: information regarding the results from fitness for duty evaluations and drug testing.~~

~~(i) Information in this file is private or controlled in accordance with Title 63G-2.~~

~~(d) I-9 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 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

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~~]under Subsection 63G-7-902(2).

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~]2011
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
R477-4
Filling Positions

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34743
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments simplify and clarify language regarding transfers and reassignments. A new Section R477-4-11, Volunteer Experience Credit, is moved from Rule R477-13 since it addresses recruitment issues. References are added in the career mobility section to refer readers to Rule R477-6 rather than including redundant language out of context.

SUMMARY OF THE RULE OR CHANGE: Section R477-4-5 is simplified. Section R477-4-11 on Volunteer Experience Credit is inserted. References in Subsection R477-4-13(5)(b) sending readers to Rule R477-6 replace previous language. Various formatting and nonsubstantive changes are made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

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 government.
♦ 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. This rule does not impact costs or savings to state employees.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jeff Herring , Executive Director

R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.[~~by reassigning an employee without a reduction in the current actual wage except as provided in federal or state law.~~]

(a) T[~~Prior to transfer or reassignment of an employee, t~~]he receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(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.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-1[~~1~~]2. 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.

R477-4-1[~~2~~]3. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a 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.

(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 at a salary rate described in R477-6-4(11)[~~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.

R477-4-1[~~3~~]4. 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.

R477-4-1[~~4~~]5. 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: [~~August 9, 2010~~]2011
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34744
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments reformat and change language for clarity. Certain schedules under salary are removed for accuracy. Redundant subsections are removed. A subsection for rule exceptions is added to the end to cover authorization for the salary section. Language in employee benefits is modified to comply with H.B. 18 (2011 General Session). Language is added to describe and clarify procedures for enrolling in retirement benefits for the Tier I and Tier II systems. (DAR NOTE: H.B. 18 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: Subsection R477-6-1(1)(c) is reformatted and rewritten, separating pay increases and decreases. In Subsection R477-6-4(1)(b), schedules IN and TL are removed and will be covered in Subsection R477-6-4(1)(c). Subsections R477-6-4(2)(c), R477-6-4(3)(c), and R477-6-4(9)(a)(i) are removed. Subsection R477-6-4(12) adds provision for exceptions to the entire Section R477-6-4. Section R477-6-6 is amended describing new medical insurance enrollment procedures and new enrollment procedures for Tier I and Tier II retirement plans.

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 government.
♦ 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. This rule does not directly impact costs or savings to state employees.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

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) Each job description[~~The General Pay Plan~~] shall include salary ranges with established minimum and maximum rates.

(b) A salary range includes every pay rate from minimum to maximum.

(c) Pay rate increases [~~and decreases~~]within salary ranges shall be:[~~at least 1/2%, or to the range minimum rate with a decrease or maximum rate with an increase, except for legislatively approved salary adjustments and longevity.~~]

(i) at least 1/2%, or

(ii) to the maximum rate within the salary range, if the difference between the current salary rate and the range maximum rate is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments and longevity.

(d) Pay rate decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum rate within the salary range, if the difference between the current salary rate and the range minimum rate is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments.

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 in longevity.

(ii) Employee may not be paid at the maximum 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) Employees designated as schedule AA, AQ[~~,~~] and AU[~~, IN, and TL~~] are not eligible for merit 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.

(a) An employee promoted to a position with a salary range maximum exceeding the employee's current salary range maximum shall receive a salary increase of at least 5%.

(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 promotion shall retain the same salary.~~

~~(d)~~]To be eligible for a promotion, an employee shall 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.

(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 of at least 1/2% or the salary range maximum rate.

(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 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 in longevity shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee in longevity shall only be eligible for an additional 2.75% increase every three years. To be eligible, an employee shall receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee in longevity who is reclassified to a position with a lower salary range shall retain the current actual wage.

(e) An employee in longevity 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 salary range maximum of the new position. The salary increase shall be at least 1/2% or the range maximum rate of the new position.

(f) Employees in Schedules AB, IN, or TL are not eligible for the longevity program.

(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 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.

(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 at least 1/2% or the minimum rate in the salary range.

(7) Transfer.

Management may decrease the current actual wage of an employee who transfers to another position. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(8) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or the minimum rate of the new position's salary range 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.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or the maximum rate 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 unique situations or considerations in the agency.

(d) 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 at least 1/2% or the maximum rate of the salary range. 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 or in longevity 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 the minimum of the salary range.

(b) Wage rate decreases shall be at least 1/2% or the minimum rate of the salary range.

(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 to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

([e]d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(11) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a salary increase or salary decrease by any amount within the new salary range.

(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.

(12) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage rate increases or decreases.

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~~]a minimum of 40 hours per pay period.

(2) An eligible employee has 60 days from the hire date to enroll in or decline a medical insurance plan[~~, dental, vision, and a flexible spending account~~].

(a) After 60 days the employee will be automatically enrolled in the state's high deductible health plan with single coverage.[~~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 change medical plans[~~enroll~~] during the annual open enrollment period for all state employees.

(c) An employee with previous medical coverage shall provide a certificate of credible coverage to the state's health care provider which states dates of eligibility for the employee, and the employee's dependents in order to have a preexisting waiting period reduced or waived.

(i) An eligible employee or dependent under the age of 19 may not be required to meet any preexisting waiting period.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) 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~~]5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has 30 days from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.[~~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~~]6) 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.

KEY: salaries, employee benefit plans, insurance, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~]2011
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.: 34745
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments articulate sick leave retirement benefits under Tier I and Tier II systems with more clarity and specificity. Expired language is removed. Clarifying language is added to reemployment rights and benefits. Disaster relief volunteer leave is expanded to organizations other than Red Cross, reflecting legitimate government-recognized organizations. Language is added to refer readers to more detail on long term disability benefits.

SUMMARY OF THE RULE OR CHANGE: Language is added in Section R477-7-6 to articulate sick leave retirement benefits under Tier I and Tier II systems. Subsection R477-7-6(5)(a) is removed along with corresponding language in Subsection R477-7-6(5)(b)(ii). Additional language is added to Subsection R477-7-10(5)(e). In Section R477-7-11, disaster relief volunteer leave is expanded to organizations other than Red Cross. Subsection R477-7-17(5) is added on long term disability benefits. Minor terminology changes and reference corrections are also made and redundant language is removed.

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 67-19-14.4 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 government.
♦ 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. Rules regarding Tier II retirement benefits reflect a potential cost or savings to eligible state employees, depending on each employee's situation and chosen options. Expansion of disaster relief volunteer leave is a potential cost savings to state employees approved for such leave.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

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♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jeff Herring , Executive Director

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

(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~~]at least 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.

(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.

R477-7-6. 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) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

([~~1~~]3)(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~~]4) 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 shall notify all employees at least 60 days before the new fiscal year begins.

([~~3~~]5) 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) one year if the employee retires during calendar year 2010; or~~

~~(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) 96 hours if the employee retires during calendar year 2010; or~~

~~(B) zero hours if the employee retires after calendar year 2010.~~

~~(C) T~~]the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5([~~4~~]5)(b)(i) shall be used to provide the following benefit.

(ii) 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.

(i[~~i~~]v) 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~~]v) 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.

([~~i~~]vi) 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.

(vii) 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.

([e]b) 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]6) 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]5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's 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.

R477-7-8. Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day 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.

R477-7-10. 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~~]2.

(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~~]a) 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 to which the employee would have been entitled had the employee not been absent due to military service. 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~~]a disaster relief organization. To request this leave an employee 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~~]disaster relief organization;

(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.

R477-7-13. 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.

(b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist.

(c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(3) Medical Reasons

(a) An employee who [~~is ineligible~~]does not qualify for FMLA, Workers Compensation, or Long Term Disability may be granted 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) 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.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is 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 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 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 shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5(7).

R477-7-17. Long Term Disability Leave.

(1) An employee who is determined eligible for the Long Term Disability Program (LTD) 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, the 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 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. 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 long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work, 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) After six months of cumulative absence from or inability to perform the 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.

(5) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

KEY: holidays, leave benefits, vacations

Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~]2011

Notice of Continuation: June 29, 2007

Authorizing, and Implemented or Interpreted Law: 34-43-103; 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.: 34746
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments add requirements for telecommuting and exclusions for commute time during telecommuting for greater control and accountability. Lunch periods are more clearly defined. Exercise release time is introduced and given defined parameters. Break periods for nursing mothers are articulated in compliance with federal law.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-8-1(1)(b) requirements and exclusions governing telecommuting are outlined. Amendments are made to Section R477-8-3 concerning provisions for lunch periods, break periods, exercise release time and breaks for nursing mothers. Other word choice changes are made.

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 government.
♦ 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. New rules for exercise release time may provide cost savings to participating employees or may restrict 30 minutes of compensated exercise time each week for employees participating in programs currently offered by some agencies. Changes to lunch and break periods may present incidental costs to state employees relative to schedule adjustments.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jeff Herring , Executive Director

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
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~~]participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;[~~and~~]

(c) not allow [~~telecommuting~~]participating employees to violate overtime rules[~~-~~];

(d) not compensate for normal commute time; and

(e) document telecommuting authorization in the Utah Performance Management system.

R477-8-3. Lunch, Break and [~~Break~~]Exercise Release Periods.

(1) [~~Management may require a minimum of 30 minutes noncompensated lunch period~~]Each full time work day shall include a minimum of 30 minutes noncompensated lunch period, unless otherwise authorized by management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

([~~3~~]a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to two days per week for 30 minutes.

(a) Exercise release time shall be in conjunction with the lunch period.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) Reasonable daily noncompensated break periods, as requested by the employee, shall be granted for the first year following the birth of a child so that the employee may express breast milk for her child. A private location, other than a restroom, shall be provided.

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 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 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~~]submit 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~~]may 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 shall be paid full-time or overtime, as appropriate. An employee 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 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.

KEY: breaks, telecommuting, overtime, dual employment
Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~|2011
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.: 34747
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R477-9-7 is added to Rule R477-9 to address rising concerns related to employees' personal use of blogs and social media.

SUMMARY OF THE RULE OR CHANGE: Section R477-9-7 adds language to define limitations and parameters of blogging and social media as it relates to state business.

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 government.
♦ 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. This rule does not directly impact cost or savings to state employees.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jeff Herring , Executive Director

R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-7. Personal Blogs and Social Media Sites.

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

(a) claim to represent the position of the State of Utah or an agency;

(b) post the seal of the State of Utah, or trademark or logo of an agency;

(c) post protected or confidential information, including copyrighted information, confidential information received from agency customers, or agency issued documents without permission from the agency head; or

(d) unlawfully discriminate against, harass or otherwise threaten a state employee or a person doing business with the State of Utah.

(2) An agency may establish policy to supplement this section.

(3) An employee may be disciplined according to R477-11 for violations of this section or agency policy.

R477-9-[~~7~~]8. 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, 2010~~]2011
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
R477-12-3
Reduction in Force

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34749
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language is added to reduce unnecessary process by eliminating need for retention points in the case of a single incumbent Workforce Adjustment Plan (WFAP). Unnecessary language listing performance factors is removed. A correction to order of separation removes Schedule A. Clarifying language is added in the Reduction in Force (RIF) section and business practices regarding RIF preference are removed from rule.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-12-3(1)(f) eliminates need for retention points in the case of a single incumbent Workforce Adjustment Plan (WFAP). The list of performance factors in Subsections R477-12-3(2)(a)(i) through (iv) is removed. In Subsection R477-12-3(4)(a) Schedule A is removed. A phrase is added to Subsection R477-12-3(8). Subsection R477-12-3(10) is removed.

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 government.
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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. This rule does not directly impact cost or savings to state employees.

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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♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jeff Herring , Executive Director

R477. Human Resource Management, Administration.
R477-12. Separations.
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;

(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) When more than one employee is affected, employees shall be listed in order of retention points.

(f) Retention points do not have to be calculated for a single incumbent WFAP.

(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) temporary employees in schedule [~~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 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 during the application process 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~~]5.

KEY: administrative procedures, employees' rights, grievances, retirement
Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~]2011
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
R477-13
Volunteer Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34750
FILED: 04/28/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary language is removed from Section R477-13-1 in order to make the program more workable and efficient. Section R477-13-2 is removed and the content is placed more appropriately in Rule R477-4 with recruitment practices. (DAR NOTE: The proposed amendment to Rule R477-4 is under DAR No. 34743 in this issue, May 15, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Section R477-13-1 is reduced to only include provisions specified in code. Section R477-13-2 is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

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 government.
♦ 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. This rule does not directly impact cost or savings to state employees.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jeff Herring , Executive Director

R477. Human Resource Management, Administration.
R477-13. Volunteer Programs.
R477-13-1. Volunteer Programs.
(1) Agency management may establish a volunteer program.
(a) A volunteer program shall include:
(i) documented agreement of the type of work and duration for which the volunteer services will be provided;

(ii) orientation to the conditions of state service and the volunteer's specific assignments;
(iii) adequate supervision of the volunteer; and
(iv) documented hours worked by a volunteer.
(2) Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state.
(3) A volunteer is considered a government employee for purposes of workers' compensation, operation of motor vehicles or equipment, and liability protection and indemnification.
[~~(1) Agency management may establish a program for people to volunteer their services to the agency consistent with the following rules. The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).~~
~~(2) When implementing a volunteer program, agency management shall:~~
~~(a) orient the volunteer to the conditions of state service and their specific job assignments;~~
~~(b) provide adequate supervision of the volunteer staff;~~
~~(c) designate the type of work for which volunteer services may be allowed to supplement paid staff;~~
~~(d) document the approval of, numbers of, and hours worked by its volunteers, based on standards established DHRM;~~
~~(e) collect data on the number of volunteers and the number of volunteer hours; and~~
~~(f) evaluate and assign volunteers in accordance with standards set by DHRM.~~
] (4) The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

[~~R477-13-2. Volunteer Experience Credit.~~
~~(1) Agency management shall apply approved and documented related volunteer experience to satisfy the job requirements for career service positions.~~
~~(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.~~
~~(b) Court ordered community service experience will not be considered volunteer work for purposes of meeting job requirements.~~
~~(2) Participants in state or other volunteer programs shall receive credit for volunteer experience for the purposes of career service employment when:~~
~~(a) The volunteer experience is related to the identified duties and responsibilities of the designated career service position as determined by agency management.~~
~~(b) The volunteer experience is documented in accordance with standards established by DHRM.~~
~~(3) Credit for documented and job related volunteer experience shall be given in the same manner as similar paid employment.~~
]
KEY: personnel management, administrative rules, rules and procedures, [~~definitions~~]volunteers
Date of Enactment or Last Substantive Amendment: [~~July 5, 2000~~]2011
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

Human Resource Management, Administration
R477-14
Substance Abuse and Drug-Free Workplace

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34751
FILED: 04/28/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments update terms and remove redundant language and unnecessary practices.

SUMMARY OF THE RULE OR CHANGE: Language in Subsection R477-14-1(2) is updated and an unnecessary phrase is removed. Subsection R477-14-1(15) is removed. Language is added in Subsection R477-14-2(6).

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 government.
♦ 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. This rule does not directly impact cost or savings to state employees.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/24/2011 09:00 AM, Senate Building (East), 420 N State Street (Capitol Hill), Beehive Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

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 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~~]under the influence of 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, transfer to, or are promoted to a highly sensitive position are subject to preemployment drug testing at agency discretion except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(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, 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 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 provided the opportunity for a last chance agreement and be required to agree 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 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 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.

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees
Date of Enactment or Last Substantive Amendment: [~~August 9, 2010~~]2011
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 Services, Substance Abuse and Mental Health
R523-20-11
Division Rules of Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34726
FILED: 04/27/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment will no longer require substance abuse contractors and subcontractors to use the Addiction Severity Index (ASI). The ASI no longer meets the industry's standard of care, so changes to this rule help ensure the latest technology is being used to identify the severity of

substance use problems for those receiving public substance abuse services.

SUMMARY OF THE RULE OR CHANGE: The use of the ASI as the assessment instrument to determine the degree of severity of a substance abuse problem is no longer required. The division now requires a thorough eight dimension bio-psycho-social-cultural assessment of each client to determine the degree of severity of their substance abuse problem. Also, the requirement of at least one staff member for each contractor and subcontractor being trained in the proper use of the ASI and ASAM instruments has been removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-105(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Amendments to this rule are associated with agencies providing direct services to individuals in the public substance abuse services system. The state will not receive a cost increase or savings through these changes because all direct services to individuals are provided by local governments, businesses and small businesses.
♦ LOCAL GOVERNMENTS: The division has determined that local governments contracting to provide public substance abuse services will receive a cost savings associated with the use of less time, by not requiring their staff to conduct an additional assessment on every client in order to meet a division mandate. There is no way of calculating the actual cost savings, but there is an assumption that an enhanced efficiency savings will exist. The required bio-psycho-social-cultural assessment that is replacing the ASI is already a component of current practice, but the required eight dimensions that are specifically mandated will slightly increase the overall time commitment that does not exist in current practice. This time increase is not anticipated to out step the time savings in eliminating the ASI. There will not be a cost savings associated with use of the ASI because it is in public domain and has no fee associated with its use by agencies. The same type of cost savings will be realized by not requiring that at least one staff member is trained in proper use of the ASI.
♦ SMALL BUSINESSES: The division has determined that small businesses subcontracting to provide public substance abuse services will receive a cost savings associated with the use of less time, by not requiring their staff to conduct an additional assessment on every client in order to meet a division mandate. There is no way of calculating the actual cost savings, but there is an assumption that an enhanced efficiency savings will exist. The required bio-psycho-social-cultural assessment that is replacing the ASI is already a component of current practice, but the required eight dimensions that are specifically mandated will slightly increase the overall time commitment that does not exist in current practice. This time increase is not anticipated to out step the time savings in eliminating the ASI. There will not be a cost savings associated with use of the ASI because it is in public domain and has no fee associated with its use by agencies. The same type of cost savings will be realized by not requiring that at least one staff member is trained in proper use of the ASI.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The division has determined that businesses subcontracting to provide public substance abuse services and individuals receiving public substance abuse services will receive a cost savings associated with the use of less time, by not requiring staff to conduct an additional assessment on every client in order to meet a division mandate. There is no way of calculating the actual cost savings, but there is an assumption that an enhanced efficiency savings will exist. The required bio-psycho-social-cultural assessment that is replacing the ASI is already a component of current practice, but the required eight dimensions that are specifically mandated will slightly increase the overall time commitment that does not exist in current practice. This time increase is not anticipated to out step the time savings in eliminating the ASI. There will not be a cost savings associated with use of the ASI because it is in public domain and has no fee associated with its use by agencies. The same type of cost savings will be realized by not requiring that at least one staff member is trained in proper use of the ASI.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no fiscal obligations associated with implementation of these amendments for local governments, businesses or other individuals. The amendments to this rule remove additional burdens of assessment from contractors and subcontractors in the public substance abuse treatment delivery system that will provide a cost savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After careful review, the Department of Human Services has determined that this rule will have an incalculable financial savings on businesses in the State of Utah. This savings is associated with the use of less time, by not requiring staff to conduct an additional assessment on every client in order to meet a division mandate, and by not requiring that at least one staff member is trained in proper use of the ASI.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Thom Dunford by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Lana Stohl, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-20. Division Rules of Administration.
R523-20-11. Use of Standard Criteria.

(1) [~~The assessment instrument that a~~]All contractors and subcontractors must [~~use to determine the degree of severity of a substance abuse problem shall be the Addiction Severity Index, (ASI)~~]conduct a thorough bio-psycho-social-cultural assessment of each client to determine the degree of severity of their substance abuse problem. This assessment must evaluate the client's status in a minimum of the following dimensions:

(a) substance abuse status;
(b) treatment history;
(c) legal status;
(d) educational and employment status;
(e) family and social status;
(f) mental health/psychiatric status;
(g) cultural status; and
(h) readiness to change.

(2) The placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the placement criteria developed by the American Society of Additive Medicine (ASAM).

(3) Documentation of the use of ASAM placement criteria must be included in each patient's record.

[~~(4) At least one staff member for each contractor and subcontractor shall be trained in the proper use of the ASI and ASAM instruments. This training must be documented in individual personnel files.~~]

KEY: substance abuse, financing of programs, service continuum, assessment instruments
Date of Enactment or Last Substantive Amendment: [~~December 29, 2009~~]2011
Notice of Continuation: June 5, 2007
Authorizing, and Implemented or Interpreted Law: 62A-15-105(5)

Insurance, Administration
R590-192
Unfair Accident and Health Income Replacement Claims Settlement Practices Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34769
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to incorporate changes as a result of adoption of a new appeals procedure for health benefit plans. The appeals process for health benefit plans is changing due to H.B. 128 passed during the 2011 General Session, and to adopt a review process that insurers are required to follow as a result of the Patient Protection and Affordability Act. The rule revisions include: new definition of an adverse benefit determination for a health benefit plan; provides notification requirements to an insured when there has been an adverse benefit determination; and limits the number of appeals for an individual policy. (DAR NOTE: H.B. 128 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: The changes to this rule apply to individuals, small employers and large employers, including health insurers. Individuals, small and large employers will have a different review process, but should not be fiscally impacted. Because of the Patient Protection and Affordability Act, insurers already must comply with the new appeals procedures. This rule adopts the requirements insurers must follow. The changes to the rule include changing "carrier" to "insurer." For health benefit plans and non-health benefit plans the definition of "Adverse Benefit Determination" and "Misrepresentation" in Section R590-192-12 have been revised; Subsection R590-192-12(17) provides unfair claims settlement methods that applies only to health benefit plans; Section R590-192-8 instructions for what a health benefit plan notification will provide; the term "department" has been changed to "commissioner."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-2-202 and Section 31A-21-312 and Section 31A-26-301 and Section 31A-26-303

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will have no effect on the department's or state's budgets or revenues, nor will it impact the workload of employees of the department. The changes do not require additional filings to or input from the department.
♦ LOCAL GOVERNMENTS: The changes to this rule will have no impact on local governments since it deals solely with the relationship between the department and their licensees and licensee's insureds in the settlement of claims.
♦ SMALL BUSINESSES: This rule relates to the way insurers, which are large businesses, handle the claims of their insureds. Small business health benefit plans are impacted by changing the way an insured appeals a denial.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule apply to individuals, small employers and large employers, including health insurers. Individuals, small and large employers will have a different review process, but should not be fiscally impacted. Because of the Patient Protection and Affordability Act, insurers already must comply with the new appeals procedures. This rule adopts the requirements insurers must follow.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule apply to individuals, small employers and large employers, including health insurers. Individuals, small and large employers will have a different review process, but should not be fiscally impacted. Because of the Patient Protection and Affordability Act, insurers already must comply with the new appeals procedures. This rule adopts the requirements insurers must follow.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses. It makes changes to the insurers claims review process.

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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/09/2011 09:00 AM, State Office Building, 450 N State Street, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-192. Unfair Accident and Health [~~Income Replacement~~] Claims Settlement Practices Rule.
R590-192-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely settlement of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely, accurate, and complete response to the [~~department~~]commissioner is provided by Subsection 31A-2-202(4) and (6).

R590-192-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of accident and health insurance claims[~~, which include income replacement claims,~~] arising under policies or certificates issued in the State of Utah. These standards include fair and rapid settlement of claims, protection of claimants under insurance policies from unfair claims settlement practices, and the promotion of the professional competence of those engaged in processing of claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim practices and responses to the [~~department~~]commissioner. This rule is regulatory in nature and is not intended to create a private right of action.

R590-192-3. Applicability and Scope.

(1) This rule applies to all accident and health insurance policies, as defined by Section 31A-1-301[~~, covering individual and group accident and health plans issued or renewed after January 1, 2003~~].

(2) This rule incorporates by reference[~~, the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure,~~] 29 CFR 2560.503-1, excluding 2560.503-1(a).

R590-192-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 29 CFR 2560.503-1(m), and the following:

(1)(a) "Adverse benefit determination" means, for an accident and health insurance policy other than a health benefit plan, any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of or failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise experimental or investigational or not medically necessary or appropriate[~~.~~]; and

(b)(i) "Adverse benefit determination" means, for a health benefit plan, that based on the insurer's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit, the:

(A) denial of a benefit;

(B) reduction of a benefit;

(C) termination of a benefit;

(D) failure to provide or make payment, in whole or part, for a benefit; or

(E) rescission of coverage.

(ii) "Adverse benefit determination" includes:

(A) denial, reduction, termination, failure to provide or make payment, or rescission that is based on a determination of an insured's eligibility to participate in a health benefit plan;

(B) failure to provide or make payment, in whole or part, for a benefit resulting from the application of a utilization review; and

(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(A) experimental;

(B) investigational; or

(C) not medically necessary or appropriate.

(2) [~~"Beneficiary" means the party entitled to receive the proceeds or benefits occurring under the policy.~~

~~(3)~~]"Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

([~~4~~]3) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

([~~5~~]4) "Claimant" means an insured, [~~the beneficiary~~]or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

([~~6~~]5) "Ongoing" or "Concurrent care" decision means an insurer has approved an ongoing course of treatment to be provided over a period of time or number of treatments.

([~~7~~]6) "Days" means calendar days.

([~~8~~]7) "Documentation" means a document, record, or other information that is considered relevant to a claimant's claim because such document, record, or other information:

(a) was relied upon in making the benefit determination;

(b) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; and

(c) in the case of an insurer providing disability income [~~replacement~~]benefits, constitutes a statement of policy or guidance with respect to the insurer concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

([~~9~~]8) "General business practice" means a pattern of conduct.

([~~10~~]9) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverage[~~s~~] afforded by an insurance policy.

([~~11~~]10) "Medical necessity" means:

(a) health care services or product that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists, medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For an intervention[~~s~~] not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For an established intervention[~~s~~], the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

([~~12~~]11) "Notice of Loss" means that notice which is in accordance with policy provisions and insurer practices. Such notice shall include any notification, whether in writing or other means, which reasonably apprizes the insurer of the existence of or facts relating to a claim.

(12) "Policy" includes a certificate issued under a group insurance contract.

(13) "Pre-service claim" means any claim for a benefit under an accident and health policy [~~or income replacement policy~~] with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(14) "Post-service claim" means any claim for a benefit that is not a pre-service claim or urgent care claim.

(15) "Scientific evidence" is:

(a)(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes;

(b) scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(16) "Urgent care claim" means any claim for medical care or treatment with respect to which the application of the time periods for making non-urgent care determination:

(a) could seriously jeopardize the life or health of the [~~claimant~~]insured or the ability of the [~~claimant~~]insured to regain maximum function; or

(b) in the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

R590-192-5. File and Record Documentation.

Each insurer's claim files are subject to examination by the commissioner[~~, or by his duly appointed designees~~]. To aid in such examination:

(1) Sufficient detailed documentation shall be contained in each claim file in order to reconstruct the benefit determination, and the calculation of the claim settlement for each claim.

(2) Each document within the claim file shall be noted as to date received, date processed and notification date.

(3) The insurer shall maintain claim data that [~~are~~]is accessible and retrievable for examination. An insurer shall be able to provide:

(a) the claim number;

(b) copy of all applicable forms;

(c) date of loss;

(d) date of claim receipt;

(e) date of benefit determination;

(f) date of settlement of the claim; and

(g) type of settlement indicated as:

(i) payment, including the amount paid;

(ii) settled without payment; or

(iii) denied.

R590-192-6. [~~Misrepresentation~~]Disclosure of Policy Provisions [~~: Prohibited Acts Applicable to All Insurers~~].

(1) An insurer, or the insurer's claim representative, shall fully disclose to a claimant the benefits, [~~and/or~~]limitations, and exclusions of an insurance policy which relate[~~s~~] to the diagnoses and services relating to the particular claim being presented.

(2) An insurer, or the insurer's claim representative, must disclose to a claimant[~~,~~] provisions of an insurance policy when receiving inquiries regarding such coverage.

R590-192-7. Notice of Loss.

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule.

(2) Notice of loss may be given to the insurer or its claim representative unless the insurer clearly directs otherwise by means of policy provisions or a separate written notice mailed or delivered to the insured.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by any authorized claim representative of the insurer.

(4) The general business practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

R590-192-8. Notification.

(1) The insurer shall provide notification of the benefit determination to the claimant which includes:

(a) the specific reason or reasons for the benefit determination, adverse or not;

(b) reference to the specific plan provisions on which the benefit determination is based;

(c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(d) a description of the insurer's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring civil action.

(2) For a health benefit plan, the notification shall provide:

(a) starting with the plan year that begins on or after July 1, 2011:

(i) sufficient information to identify the claim involved, including the date of service, the health care provider, and the claim amount, if applicable; and

(ii) notification of assistance available at the Utah Insurance Department, Office of Consumer Health Assistance, Suite 3110, State Office Building, Salt Lake City UT 84114; and

(b) starting with the plan year that begins on or after January 1, 2012:

(i) the diagnosis code and treatment code with the corresponding meaning for each; and

(ii) the content in a culturally and linguistically appropriate manner as required by 45 CFR 147.136 (e).

(3) An insurer and the insurer's claim representative, in the case of a failure by a claimant or an authorized representative of a claimant to follow the individual or group health plan's procedures for filing a pre-service claim, shall notify the claimant or representative, of the failure and provide the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the claimant or authorized representative, as appropriate, as soon as possible, but not later than five days, or 24 hours for a claim involving urgent care, following the failure. Notification may be oral, unless written notification is requested by the claimant or authorized representative.

([~~3~~]4) [~~Income replacement~~]Disability income adverse benefit determinations must:

(a) if an internal rule, guideline, protocol, or other criterion was relied upon in making the adverse determination, provide either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(b) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, provide either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

([~~4~~]5) Urgent care adverse benefit determination must:

(a) provide written or electronic notification to the claimant no later than three days after the oral notification; and

(b) provide a description of the expedited review process applicable to such claims.

R590-192-9. Minimum Standards for Claim Benefit Determination and Settlement.

(1) All benefit determination time limits begin once the insurer receives a claim, without regard to whether all necessary information was filed with the original claim. If the insurer requires an extension due to the claimant's failure to submit necessary information, the time for making a decision is [~~tolled~~]determined from the date the notice is sent to the claimant through:

(a) the date that the claimant provides the necessary information; or

(b) 48 hours after the end of the period afforded the claimant to provide the specified additional information.

(2) Urgent Care Claims:

(a) In a case of urgent care, an insurer shall notify the claimant of the insurer's benefit decision, adverse or not, as soon as possible, taking into account the medical exigencies of the situation, but no later than:

(i) 24 hours after the receipt of the claim for all health benefit plans starting with the plan year that begins on or after January 1, 2012; or

(ii) 72 hours after the receipt of the claim for all other accident and health coverage.

(b)[~~it is the insurer's duty to determine whether a claim is urgent based on the information provided by the claimant or authorized representative. However, if~~](i) If the claimant does not provide sufficient information for the plan to make a decision, the plan must notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim, of the specific information that is required. The claimant shall be given reasonable time, but not less than 48 hours, to provide that information.

([e]ii) The insurer must notify the claimant of the insurer's decision as soon as possible but not later than 48 hours after the earlier of the plan's receipt of the requested information or the end of the time given to the claimant to provide the information.

(3) Concurrent Care Decision:

(a) Reduction or termination of concurrent care:

(i) Any reduction in the course of treatment is considered an adverse benefit determination.

(ii) The insurer must give the [~~consumer~~]claimant notice, with sufficient time to appeal that adverse benefit determination and sufficient time to receive a decision of the appeal before any reduction or termination of care occurs.

(b) Extension of concurrent care:

(i) A claimant may request an extension of treatment beyond what has already been approved.

(ii) If the request for an extension is made at least 24 hours before the end of the approved treatment, the insurer must notify the claimant of the insurer's decision as soon as possible but no later than 24 hours after receipt of the claim.

(iii) If the request for extension does not involve urgent care, the insurer must notify the claimant of the insurer's benefit decision using the response times for a post-service claim.

(4) Pre-Service Benefit Determination:

(a) An insurer must notify the claimant of the insurer's benefit decision within 15 days of receipt of the request for care.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 15 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

(d) once the pre-service claim determination has been made and the medical care rendered, the actual claim filed for payment will be processed according to the time requirements of a post-service claim.

(5) Post-Service Claims:

(a) An insurer must notify the claimant of the insurer's benefit decision within 30 days of receipt of the request for claim.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 30 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

(6) A health benefit plan is required to provide continued coverage pending the outcome of an appeal.

(7) An insurer offering an individual health benefit plan shall provide only one level of internal appeal before the final determination is made.

R590-192-10. Minimum Standards for Disability Income [~~Replacement~~]Benefit Determination and Settlement.

In the case of a claim for disability income[~~replacement~~] benefits, the insurer shall notify the claimant, of the insurer's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the insurer.

(1) This period may be extended by the insurer for up to 30 days, provided that the insurer determines that such an extension is necessary due to matters beyond the control of the insurer and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the insurer expects to render a decision.

(2) If, prior to the end of the first 30-day extension period, the insurer determines that, due to matters beyond the control of the insurer, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided the insurer notifies the claimant prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date at which the insurer expects to render a decision.

(3) Each notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

R590-192-11. Minimum Standards for Responses to the [~~Department~~]Commissioner.

(1) Every insurer, upon receipt of an inquiry from the [~~department~~]commissioner regarding a claim, shall furnish the [~~department~~]commissioner with a substantive response to the inquiry within the appropriate number of days indicated by such inquiry. If it is determined by the insurer that they are unable to respond in the time frame requested, the insurer may contact the [~~department~~]commissioner to request an extension.

(2) The insurer shall acknowledge and substantively respond within 15 days to any written communication from the claimant relating to a pending claim.

R590-192-12. Unfair Methods, Deceptive Acts and Practices Defined.

The commissioner, pursuant to Subsection 31A-26-303(4), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2)(a) failing to provide the [~~insured or beneficiary~~]claimant with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such alleged misrepresentation is the basis for the denial.

(b) For a health benefit plan, misrepresentation means an intentional misrepresentation of a material fact;

(3) compensation by an insurer of its employees, [~~agents~~]producers or contractors of any amounts which are based on savings to the insurer as a result of denying or reducing the payment of claims, unless compensation relates to the discovery of billing or processing errors;

(4) failing to deliver a copy of standards for prompt investigation of claims to the [~~department~~]commissioner when requested to do so;

(5) refusing to settle claims without conducting a reasonable and complete investigation;

(6) denying a claim or making a claim payment to the [~~insured or beneficiary~~]claimant not accompanied by a notification, statement or explanation of benefits setting forth the exclusion or benefit under which the denial or payment is being made and how the payment amount was calculated;

(7) failing to make payment of a claim following notice of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(8) advising a claimant not to obtain the services of an attorney or other advocate or suggesting that the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(9) misleading a claimant as to the applicable statute of limitations;

(10) deducting from a loss or claims payment made under one policy those premiums owed by the [~~insured~~]claimant on another policy, unless the [~~insured~~]claimant consents to such arrangement;

(11) failing to settle a claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(12) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(13) refusing to provide a written reason for the denial of a claim upon demand of the claimant;

(14) refusing to pay reasonably incurred expenses to the claimant when such expenses resulted from a delay, as prohibited by this rule, in the claim settlement;

(15) failing to pay interest at the legal rate in Title 15:

(a) upon amounts that are due and unpaid within 20 days of completion of investigation; or

(b) to a health care provider on amounts that are due and unpaid after the time limits allowed under 31A-26-301.6 ;[~~and~~]

(16) failing to provide a claimant with an explanation of benefits; and

(17) for a health benefit plan:

(a) failing to allow a claimant to review the claim file and to present evidence and testimony as part of the claim and appeal processes;

(b) failing to provide the claimant, at no cost, with any new or additional evidence considered, relied upon, or generated by the insurer in connection with the claim; or

(c) failing to ensure that all claims and appeals are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision.

R590-192-13. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R590-192-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule [~~45 days from the rule's effective date~~]on July 1, 2011.

KEY: insurance law
Date of Enactment or Last Substantive Amendment: [~~June 24, 2003~~]2011
Notice of Continuation: June 25, 2009
Authorizing, and Implemented or Interpreted Law: 31A-1-301; 31A-2-201; 31A-2-204; 31A-2-308; 31A-21-312; 31A-26-303

Insurance, Administration
R590-203
Health Grievance Review Process and Disability Claims

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34768
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to incorporate changes as a result of adoption of a new appeals procedure for health benefit plans. The appeals process for health

benefit plans is changing due to H.B. 128 during the 2011 General Session, and to adopt a review process that insurers are required to follow as a result of the Patient Protection and Affordability Act. Due to this change, the grievance review procedures for health benefit plans will differ from those currently required for health care insurance. To preserve the process for health care policies other than a health benefit plan this rule is being revised to exclude health benefit plans, and a new rule, R590-261, is being adopted for health benefit plans. Additionally, the rule was reviewed and items identified for change including: adding a definition for urgent care claim and carrier; and updating the reference of insurer to carrier. (DAR NOTE: H.B. 128 is effective as of 05/10/2011. The proposed new Rule R590-261 is under DAR No. 34770 in this issue, May 15, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: To preserve the process for health care policies other than a health benefit plan, this rule is being revised to exclude health benefit plans, and a new rule, R590-261, is being adopted for health benefit plans. The changes to this rule include: adding a definition for urgent care claim and carrier; and updating the reference of insurer to carrier.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-2-203 and Section 31A-22-629 and Section 31A-4-116

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will have no effect on the department or state's budget or revenues, nor will it impact the workload of employees of the department.
♦ LOCAL GOVERNMENTS: Local government will not be affected since the rule relates solely to the relationship between the department and its licensees and the insureds of the insurer.
♦ SMALL BUSINESSES: The changes to this rule should have no fiscal impact on any entity associated with this rule, including small or large businesses insurers or their licensees. Health benefit plans are being excluded from the rule, definitions are being changed and the reference to carriers is being changed to insurers.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule should have no fiscal impact on any entity associated with this rule, including small or large businesses insurers or their licensees. Health benefit plans are being excluded from the rule, definitions are being changed and the reference to carriers is being changed to insurers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule should have no fiscal impact on any entity associated with this rule, including small or large insurers or their insureds. Health benefit plans are being excluded from the rule, definitions are being changed and the reference to carriers is being changed to insurers.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/09/2011 09:00 AM, State Office Building, 450 N State Street, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-203. Health Grievance Review Process[~~and Disability Claims~~].
R590-203-1. Authority.

This rule is specifically authorized by Subsections 31A-22-629(4) and 31A-4-116, which requires the commissioner to establish minimum standards for grievance review procedures. The rule is also promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to examine [~~insurer~~]carrier records, files, and documentation is provided by Section 31A-2-203.

R590-203-2. Purpose.

The purpose of this rule is to ensure that [~~insurer's~~]a carrier's grievance review procedures for individual and group health insurance and disability income [~~replacement~~]plans comply with [~~the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, ~~]29 CFR 2560.503-1, and [~~Utah Code~~]Sections 31A-4-116 and 31A-22-629.

R590-203-3. Applicability and Scope.

(1) [~~Except as provided in R590-203-3.(3), this~~]This rule applies to individual and group:

(a) [~~policies issued or renewed and effective on or after January 1, 2001~~]health care insurance;

(b) disability income [~~replacement~~]policies;[
~~(i) including short-term;~~] and
[~~(ii) long-term disability policies;~~
] (c) [~~health insurance; and~~
~~(d)~~] health maintenance organization contracts.

(2) Long Term Care and Medicare supplement policies are not considered health insurance for the purpose of this rule.

(3) [~~Income replacement, short-term and long-term disability~~]Disability income policies[~~,~~] are exempt from R590-203-6.

(4) This rule does not apply to a health benefit plan that complies with R590-261, Health Benefit Plan Adverse Benefit Determinations.

R590-203-4. Definitions.

[~~For~~]In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

(1)(a) "Adverse benefit determination" means the:

(i) denial of a benefit;

(ii) reduction of a benefit;

(iii) termination of a benefit; or

(iv) failure to provide or make payment, in whole or in part, for a benefit.

(b) "Adverse benefit determination" includes:

(i) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a plan;

(ii) a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of a utilization review;

(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(A) experimental;

(B) investigational; or

(C) not a medical necessity or appropriate.

(2) "Carrier" means any person or entity that provides health insurance in this state including:

(a) an insurance company;

(b) a prepaid hospital or medical care plan;

(c) a health maintenance organization;

(d) a multiple employer welfare arrangement; and

(e) any other person or entity providing a health insurance plan under Title 31A.

([~~1~~]3) "Consumer Representative" may be an employee of the [~~insurer~~]carrier who is a consumer of a health insurance or a[~~n~~] disability income [~~replacement~~]policy, as long as the employee is not:

(a) the individual who made the adverse determination; or

(b) a subordinate to the individual who made the adverse determination.

[~~(2) "Health Insurance" means a contract of:~~

~~(a) health care insurance as defined in 31A-1-301; and~~

~~(b) health maintenance organization as defined in 31A-8-101.~~

] ([~~3~~]4) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) that when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

([~~4~~]5)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(6)(a) "Urgent care claim" means a request for a health care service or course of treatment with respect to which the time periods for making non-urgent care request determination:

(i) could seriously jeopardize the life or health of the insured or the ability of the insured to regain maximum function; or

(ii) in the opinion of a physician with knowledge of the insured's medical condition, would subject the insured to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

(b)(i) Except as provided in Subsection (6)(a)(ii), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the carrier shall apply the judgment of a prudent layperson who possesses an average knowledge of health and medicine.

(ii) Any request that a physician with knowledge of the insured's medical condition determines is an urgent care request within the meaning of Subsection (6)(a) shall be treated as an urgent care claim.

R590-203-5. Adverse Benefit Determination.

(1) A[~~n insurer's~~]carrier's adverse benefit determination review procedure shall be compliant with the adverse benefit determination review requirements set forth in [~~the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, ~~]29 CFR 2560.503-1, effective January 20, 2001. This document is incorporated by reference and available for inspection

at the Insurance Department[~~ and the Department of Administrative Rules~~].

(2) [~~The provision of this rule and federal regulation applies to claims filed under individual or group plans on or after the first day of the first plan year beginning on or after July 1, 2002, but no later than January 1, 2003.~~

~~(3)~~]A[~~n insurer's~~]carrier's adverse benefit determination appeal board or body shall include at least one consumer representative that shall be present at every meeting.

R590-203-6. Independent and Expedited Adverse Benefit Determination Reviews for Health Insurance.

(1) A[~~n insurer~~]carrier shall provide an independent review procedure as a voluntary option for the resolution of adverse benefit determinations[~~ of medical necessity~~].

(2) An independent review procedure shall be conducted by an independent review organization, person, or entity other than the [~~insurer~~]carrier, the plan, the plan's fiduciary, the employer, or any employee or agent of any of the foregoing, that do not have any material professional, familial, or financial conflict of interest with the health plan, any officer, director, or management employee of the health plan, the enrollee, the enrollee's health care provider, the provider's medical group or independent practice association, the health care facility where service would be provided and the developer or manufacturer of the service being provided.

(3) Independent review organizations shall be designated by the [~~insurer~~]carrier, and the independent review organization chosen shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.

(4) The submission to an independent review procedure is purely voluntary and left to the discretion of the claimant.

(5) A[~~n insurer's~~]carrier's voluntary independent review procedure shall:

(a) waive any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a dispute of medical necessity to a voluntary level of appeal provided by the plan;

(b) agree that any statute of limitations or other defense based on timeliness is tolled during the time a voluntary appeal is pending;

(c) allow a claimant to submit a dispute of medical necessity to a voluntary level of appeal only after exhaustion of the appeals permitted under 29 CFR Subsection 2560.503-1(c)(2)[~~, of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for the Administration and Enforcement: Claims Procedure~~];

(d) upon request from any claimant, provide sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed decision about whether to submit a dispute of medical necessity to the voluntary level of appeal. This information shall contain a statement that the decision to use a voluntary level of appeal will not effect the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, and the process for selecting the decision maker.

(e) An independent review conducted in compliance with Section 31A-22-629, and this rule, can be binding on both parties. A claimant's submission to a binding independent review is purely voluntary and appropriate disclosure and notification must be given as required by [~~the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure,~~] 29 CFR 2560.503-1.

(6) Standards for voluntary independent review:

(a) The [~~insurer's~~]carrier's internal adverse benefit determination process must be exhausted unless the [~~insurer~~]carrier and [~~insured~~]claimant mutually agree to waive the internal process.

(b) Any adverse benefit determination of medical necessity may be the subject of an independent review.

(c) The claimant has 180 calendar days from the date of the final internal review decision to request an independent review.

(d) A[~~n insurer~~]carrier shall use the same minimum standards and times of notification requirement for an independent review that are used for internal levels of review, as set forth in 29 CFR Subsection 2560.503-1(h)(3), (i)(2) and (j).

(7) A[~~n insurer~~]carrier shall provide an expedited review process for cases involving urgent care claims.

(8) A request for an expedited review of an adverse benefit determination of medical necessity may be submitted either orally or in writing. If the request is made orally a[~~n insurer~~]carrier shall, within 24 hours, send written confirmation to the claimant acknowledging the receipt of the request for an expedited review.

(9) An expedited review requires:

(a) all necessary information, including the plan's original benefit determination, be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method;

(b) a[~~n insurer~~]carrier to notify the claimant of the benefit review determination, as soon as possible, taking into account the medical urgency, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination; and

(c) a[~~n insurer~~]carrier to use the same minimum standard for timing and notification as set forth in 29 CFR Subsection 2560.503-1(h), 503-1(i)(2)(i), and 503-1(j).

(10) This section, R590-203-6, does not apply to disability income [~~replacement~~]policies[~~, short term disability policies or long term disability policies~~].

R590-203-7. Disability Income [~~Replacement, Short-Term and Long-Term Disability,~~]Adverse Benefit Determination Review.

(1) A[~~n insurer~~] carrier will notify a claimant of the benefit determination within 45 days of receipt of the claimant's request for review of an adverse benefit determination.

(2) The time period for making a determination on review may be extended for up to 45 days when necessary due to matters beyond the control of the [~~insurer~~]carrier.

(3) If the time period is extended due to the claimant's failure to submit information necessary to decide a claim, the time period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent until the date on which the claimant responds to the request for additional information.

(4) Upon request, relevant information, free-of-charge, must be provided to the [~~insured~~]claimant on any adverse benefit determination.

R590-203-8. File and Record Documentation.

A[~~n insurer~~]carrier [~~selling health insurance or income replacement insurance, including short-term disability and long-term disability,~~] shall:

(1) make available upon request by the commissioner[~~, or the commissioner's duly appointed designees,~~] all adverse benefit determination review files and related documentation[~~.~~]; and

(2) [~~An insurer~~] shall [~~keep~~]maintain these records for the current calendar year plus five years.

R590-203-9. [~~Compliance.~~

~~(1) Insurers are to be compliant with the provisions of this rule and the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, by July 1, 2002.~~

~~(2) The clarification changes made for income replacement and short-term and long-term disability policies are effective on the date these rule changes take effect.~~

~~R590-203-10.~~] Relationship to Federal Rules.

If a[~~n insurer~~]carrier complies with the requirements of [~~the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure,~~] 29 CFR 2560.503-1, then this rule is not applicable to employer plans, except for Sections 4, 5, 6, 7, and 8 of this rule. All individual plans will remain subject to this rule in its entirety.

R590-203-[~~11.~~]10. Enforcement Date.

The commissioner shall begin enforcing the provisions of this rule July 1, 2011.

R590-203-11. Severability.

If a provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance
Date of Enactment or Last Substantive Amendment: [~~December 28, 2005~~]2011
Notice of Continuation: April 17, 2007
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-203; 31A-4-116; 31A-22-629

Insurance, Administration
R590-246-4
Initial and Renewal Licensing Process

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34709
FILED: 04/20/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are two reasons for the change of this rule. First, to correct a date that would require anyone obtaining a new license after 05/04/2008 to pay the cost of a new license every time they renewed their license. The second change provides a more direct website URL to the department for professional employer organizations (PEO) information and forms.

SUMMARY OF THE RULE OR CHANGE: Subsection R590-246-4(2) provides the date renewal license applications are due each year. Subsection R590-246-4(3) eliminates the reference to PEOs that are registered with the Department of Commerce prior to 05/04/2008 when their license is being renewed. New wording instructs PEOs on how to file and pay for initial and renewal fees and applications. In four different places in Section R590-246-4, the department's website URL has been made more specific.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-40-103 and Section 31A-40-302 and Section 31A-40-304

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will have no impact on the department or state's budget or workload. The changes follow the procedures being followed by the department. The current wording in Subsection R590-246-4(3) requires any PEO not registered with the Department of Commerce prior to 05/04/2008 to be issued a new license, even at renewal. The cost of a new license is $2,000 and the cost of a renewal license is $1,000. This original wording was to assist in the transition from the Department of Commerce registering PEOs to the Insurance Department licensing them. The wording is no longer needed and is being eliminated. Since the department has never charged a renewal license at the rate of an initial license fee, this change will have no impact on department or state revenues.
♦ LOCAL GOVERNMENTS: This rule has no fiscal effect on local governments. The rule deals solely with the relationship between the department and its licensees. In this case, the licensee is the PEO.
♦ SMALL BUSINESSES: There will be no fiscal impact on small businesses since the changes being made to this rule mirror the licensing procedures the department has already been following since they began licensing PEOs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no fiscal impact on individuals, large businesses, or local governments since the changes being made to this rule follow the intent of the rule and the current department renewal procedures and fees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no fiscal impact on affected persons since the changes being made follow the intent of the rule and the department's renewal procedures and fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses in Utah. It simply clarifies the intent of the original rule and the licensing procedures of the department in the case of PEOs.

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 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance Administration.
R590-246. Professional Employer Organization (PEO) License Application Rule.
R590-246-4. Initial and Renewal Licensing Process.

(1) All professional employer organization types must comply with the appropriate statutory requirements and complete and submit the appropriate initial or renewal license application form and any supporting documents to the commissioner.

(2) The initial or renewal application form, and all attachments must be submitted electronically via:

(a) a PDF attachment to an email - the preferred method;[~~or~~]

(b) an electronic facsimile[~~-~~]; or

(c) Renewal applications are due September 30th of each year.

(3)[~~A professional employer organization applicant that was registered with the Division of Professional Licensing, Utah Department of Commerce prior to May 4, 2008, will be considered as a renewing licensee by the Department and will:~~

~~(a) submit a renewal application prior to September 30, 2008; and~~

~~(b) will pay the annual renewal fee in accordance with the instructions issued with the renewal invoice.~~

](a) Pay the initial license fee by check submitted to the address shown at the bottom of the last page of the application found at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html. Checks not drawn on the professional employer organization must be referenced to the organization.

(b) Pay renewal fees in accordance with the instructions issued with the renewal invoice.

(4) A professional employer organization applicant that was not registered with the Division of Professional Licensing, Utah Department of Commerce prior to May 4, 2008, is a new applicant and must:

(a) submit a new application;

(b) pay the license fee by check submitted to the address on the Department's webpage at www.insurance.gov. Checks not drawn on the Professional Employer Organization must be referenced to the organization.

([~~4~~]5) Professional employer types for initial and renewal licenses:

(a) Professional Employer Organization - Not CERTIFIED Through An Assurance Organization.

(i) Comply with the requirements in Sections 31A-40-205, 31A-40-302 and 31A-40-305.

(ii) Complete the Professional Employer Organization - Not Certified Through An Assurance Organization license application form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(iii) The requirement in 31A-40-302(2)(g) will be satisfied by completing and submitting the UCAA Biographical Affidavit form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(b) Professional Employer Organization - CERTIFIED Through An Assurance Organization.

(i) Comply with the requirements in Section 31A-40-303.

(ii) Complete the Professional Employer Organization - Certified Through An Assurance Organization license application form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(c) Professional Employer Organization - Small Operation License.

(i) Comply with the requirements in Section 31A-40-304.

(ii) Complete the Professional Employer Organization - Small Operation License application form posted on the Department's webpage at www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html.

(d) Professional Employer Organization Group.

(i) Comply with the requirements in Section 31A-4-306.

(ii) Complete the appropriate Professional Employer Organization license application:

(A) Professional Employer Organization - Not Certified Through An Assurance Organization;

(B) Professional Employer Organization - Certified Through An Assurance Organization; or

(C) Professional Employer Organization - Small Operation License.

KEY: professional employer organization licensing
Date of Enactment or Last Substantive Amendment: [~~September 11, 2008~~]2011
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-40-103; 31A-40-302; 31A-40-304

Insurance, Administration
R590-259
Dependent Coverage to Age 26

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34727
FILED: 04/28/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Suggested changes for this rule have come from a member of the health insurance industry as well as the Insurance Department. The changes are for clarification purposes and to correct grammar and add a new code citation to the Authority Section.

SUMMARY OF THE RULE OR CHANGE: A new code reference has been added to Section R590-259-1, Authority. The code citation was changed during the 2011 General Session in H.B. 128, Health Reform Amendments. The new wording requires insurers to comply with specific requirements of the federal Patient Protection and Affordable Care Act and the Health Care Education Reconciliation Act of 2010. These requirements specifically relate to the requirements already in this rule. Subsection R590-259-8(1)(a) makes a grammatical correction and clarifies that health insurers shall offer continuous enrollment for individuals applying for a new policy unless Section R590-259-9 applies and the individual is under the age of 19. The changes to Subsection R590-259-9(1) are just for clarification purposes only. Words and phrases have been moved around to bring greater clarity to the topic but the meaning remains the same. (DAR NOTE: H.B. 128 is effective as of 05/10/2011.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-22-605

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes made to this rule are for clarification purposes only and will create no change to the budget or work of the department or the state.
♦ LOCAL GOVERNMENTS: The changes to this rule will have no fiscal impact on local governments since it deals solely with the relationship of the department and its licensees. The changes will not affect an insurer's relationship with their insureds.
♦ SMALL BUSINESSES: The changes to this rule will have no fiscal impact on small or large businesses or consumers since the changes are grammatical and for clarification purposes only.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule will have no fiscal impact on small or large businesses or consumers since the changes are grammatical and for clarification purposes only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will have no fiscal impact on small or large businesses or consumers since the changes are grammatical and for clarification purposes only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will create no fiscal impact on businesses since the changes are for clarification purposes only.

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 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-259. Dependent Coverage to Age 26.
R590-259-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-212(5) and 31A-22-605(4).

R590-259-8. Enrollment Periods.

(1) An individual carrier shall offer:

(a) continuously enrollment for individuals applying for a new policy[~~:~~] unless R590-259-9 applies; and

(b) for a dependent to be added to an existing policy:

(i) beginning May 1, 2011 and extending through June 15, 2011 for coverage effective July 1, 2011; and

(ii) at least once a year beginning 45 days prior to the policy renewal; or

(iii) continuously.

(2) During an enrollment period in R590-259-8(1), a dependent under the age of 19 shall be offered coverage on a guaranteed issue basis and without any limitations, pre-existing exclusions or riders based on health status.

(3) A health insurer shall provide prior written notice to each of its policyholders annually of the enrollment rights in R590-259-8(1)(b) that includes information as to the enrollment dates and how a dependent eligible for enrollment may apply for coverage with the insurer.

R590-259-9. Utah Alternative Mechanism Enrollment.

(1) An individual carrier shall only be required to offer [~~a continuous enrollment~~]coverage to an individual under age 19 [~~with~~]if the individual first obtains a certificate of insurability[~~:~~] from the Comprehensive High Risk Pool pursuant to Subsection 31A-30-108(3) and 31A-30-109(1), in which case, the coverage shall be offered by the carrier:

(a) [~~as required by Subsection 31A-30-108(3) and 31A-30-109(1); and~~]on a continuous open enrollment basis; and

(b) on an underwritten basis without any limitations, pre-existing exclusions or riders based on health status.

(2) An individual carrier shall not:

(a) require a health benefit plan offered under the requirements of this section to cover more than one individual;

(b) deny or unreasonably delay the issuance of a policy; or

(c) refuse to issue a policy.

KEY: health insurance open enrollment
Date of Enactment or Last Substantive Amendment: [~~January 25,~~]2011
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-605

Insurance, Administration
R590-261
Health Benefit Plan Adverse Benefit Determinations

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 34770
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to incorporate changes as a result of adoption of a new appeals procedure for health benefit plans. The appeals process for health benefit plans is changing due to H.B. 128 passed during the 2011 General Session, and to adopt a review process that insurers are required to follow as a result of the Patient Protection and Affordability Act. (DAR NOTE: H.B. 128 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: The rule is to incorporate changes as a result of adoption of a new appeals procedures for health benefit plans. The appeals process for health benefit plans is changing due to H.B 128 passed during the 2011 General Session, and to adopt a review process that insurers are required to follow as a result of the Patient Protection and Affordability Act. This rule applies to all health benefit plans as defined in Section 31A-1-301 except for a grandfathered health plan as described in 45 CFR 147.140.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-2-212 and Section 31A-22-629

MATERIALS INCORPORATED BY REFERENCES:

- Adds Appendix B, Independent Review Request Form, published by Insurance Department, 2011
- Adds Appendix A, Independent Review Organization Application and Checklist, published by Insurance Department, 2011

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This rule will have no fiscal impact on the department's or state's budgets or revenues, nor will it impact the workload of employees of the department. The changes do not require additional filings to or input from the department.

♦ LOCAL GOVERNMENTS: This rule relates to the relationship between the department and their licensees and will have no impact on local governments.

♦ SMALL BUSINESSES: The changes to this rule apply to individuals, small employers and large employers, including health insurers. Individuals, small and large employers will have a different review process, but should not be fiscally impacted. Because of the Patient Protection and Affordability Act, insurers already must comply with the new appeals procedures. This rule adopts the requirements insurers must follow.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule apply to individuals, small employers and large employers, including health insurers. Individuals, small and large employers will have a different review process, but should not be fiscally impacted. Because of the Patient Protection and Affordability Act, insurers already must comply with the new appeals procedures. This rule adopts the requirements insurers must follow.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule apply to individuals, small employers and large employers, including health insurers. Individuals, small and large employers will have a different review process, but

should not be fiscally impacted. Because of the Patient Protection and Affordability Act, insurers already must comply with the new appeals procedures. This rule adopts the requirements insurers must follow.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is procedural in nature and 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 06/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/09/2011 09:00 AM, State Office Building, 450 N State Street, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-261. Health Benefit Plan Adverse Benefit Determinations.
R590-261-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-629(4) which requires the commissioner to adopt rules that establish standards for independent reviews, Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and 31A-2-212(5)(b) wherein the commissioner requires compliance with the Patient Protection and Affordable Care Act.

R590-261-2. Purpose.

The purpose of this rule is to provide a uniform standard for the establishment and maintenance of an independent review procedure to assure that a claimant has the opportunity for an independent review of an adverse benefit determination.

R590-261-3. Scope.

(1) This rule applies to all health benefit plans as defined in 31A-1-301 except for a grandfathered health plan as described in 45 CFR 147.140.

(2) A grandfathered health benefit plan is subject to R590-203 or may voluntarily comply with this rule upon the written consent of the policyholder.

(3) A self-funded health plan may voluntarily comply with the independent review process set forth in this rule.

R590-261-4. Incorporation by Reference.

The following appendices are hereby incorporated by reference within this rule and are available at www.insurance.utah.gov/legalresources/currentrules.html:

(1) Appendix A, Independent Review Organization Application and Checklist, dated 2011.

(2) Appendix B, Independent Review Request Form, dated 2011

R590-261-5. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions apply for purposes of this rule:

(1)(a) "Adverse benefit determination" means, that based on the carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit, the:

(i) denial of a benefit;

(ii) reduction of a benefit;

(iii) termination of a benefit;

(iv) failure to provide or make payment, in whole or part, for a benefit; or

(v) rescission of coverage.

(b) "Adverse benefit determination" includes:

(i) denial, reduction, termination, failure to provide or make payment, or rescission that is based on a determination of an insured's eligibility to participate in a health benefit plan;

(ii) failure to provide or make payment, in whole or part, for a benefit resulting from the application of a utilization review; and

(c) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(i) experimental;

(ii) investigational; or

(iii) not medically necessary or appropriate.

(2) "Carrier" means any person or entity that provides health insurance in this state including:

(a) an insurance company;

(b) a prepaid hospital or medical care plan;

(c) a health maintenance organization;

(d) a multiple employer welfare arrangement; and

(e) any other person or entity providing a health insurance plan under Title 31A.

(3) "Claimant" means an insured or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

(4) "Clinical reviewer" means a physician or other appropriate health care provider who:

(a) is an expert in the treatment of the claimant's medical condition that is the subject of the review

(b) is knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition;

(c) holds an appropriate license or certification; and

(d) has no history of disciplinary actions or sanctions.

(5)(a) "Rescission" means a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect.

(b) "Rescission" does not include a cancellation or discontinuance of coverage under a health benefit plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

R590-261-6. Adverse Benefit Determination Procedure Compliance.

An adverse benefit determination procedure shall be compliant with this rule and the requirements for adverse benefit determinations set forth in 29 CFR 2560.503-1 and 45 CFR 147.136.

R590-261-7. Notice of Right to Independent Review.

(1) With each notice of a final adverse benefit determination, the carrier shall provide written notice of the claimant's right for an independent review of the determination.

(2) The notice in Subsection (1) shall include the following, or substantially equivalent, statement:

"We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by a health care professional who has no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested. To receive additional information about an independent review, contact the Utah Insurance Commissioner by mail at Suite 3110 State Office Building, Salt Lake City UT 84114; by phone at 801 538-3077; or electronically at healthappeals.uid@utah.gov."

R590-261-8. Exhaustion of Internal Review Process.

The carrier's internal review process shall be exhausted prior to an independent review unless:

(1) the carrier agrees to waive the internal review process;

(2) the carrier has not complied with the requirements for the carrier's internal review process; or

(3) the claimant has requested an expedited independent review pursuant to Section 10 at the same time as requesting an expedited internal review.

R590-261-9. Independent Review Organizations.

(1) The commissioner shall compile and maintain a list of approved independent review organizations.

(2) To be considered for placement on the list of approved independent review organizations, an independent review organization shall:

(a) be accredited by a nationally recognized private accrediting entity;

(b) meet the requirements of this rule; and

(c) have written policies and procedures that ensure:

(i) that all reviews are conducted within the specified time frames;

(ii) the selection of qualified and impartial clinical reviewers;

(iii) the confidentiality of medical and treatment records and clinical review criteria; and

(iv) that any person employed by or under contract with the independent review organization adheres to the requirements of this rule.

(3) An applicant requesting placement on the list of approved independent review organizations shall submit for the commissioner's review:

(a) the application form attached to this rule as Appendix A;

(b) all documentation and information requested on the application, including proof of being accredited by a nationally recognized private accrediting entity; and

(c) the application fee.

(4) The commissioner shall terminate the approval of an independent review organization if the commissioner determines that the independent review organization has lost its accreditation or no longer satisfies the minimum requirements for approval.

(5)(a) An independent review organization may not own or control, or be owned or controlled by:

(i) a carrier;

(ii) a health benefit plan;

(iii) a health benefit plan's fiduciary;

(iv) an employer or sponsor of a health benefit plan;

(v) a trade association of:

(A) health benefit plans;

(B) carriers; or

(C) health care providers; or

(vi) an employee or agent of any one listed in Subsection (5)(a)(i) through (v).

(b) An independent review organization and the clinical reviewer assigned to conduct an independent review may not have a material professional, familial, or financial conflict of interest with:

(i) the carrier;

(ii) an officer, director, or management employee of the carrier;

(iii) the health benefit plan;

(iv) the plan administrator, plan fiduciaries, or plan employees;

(v) the insured or claimant;

(vi) the claimant's health care provider;

(vii) the health care provider's medical group or independent practice association;

(viii) a health care facility where the service would be provided; or

(ix) the developer or manufacturer of the service that would be provided.

R590-261-10. Standard Independent Review.

(1) The carrier shall pay the cost of the independent review organization for conducting the independent review.

(2) The independent review of an adverse benefit determination is available to the claimant regardless of the dollar amount of the claim involved.

(3)(a) The claimant shall have 180 calendar days after the receipt of a notice of an adverse benefit determination to file a request with the commissioner for an independent review.

(b) The claimant shall use the Independent Review Request Form attached to this rule as Appendix B to file the request.

(c) A request for an independent review sent to the carrier instead of the commissioner shall be forwarded to the commissioner by the carrier within one business day of receipt.

(4)(a) Upon receipt of a request for an independent review, the commissioner shall send a copy of the request to the carrier for a preliminary review.

(b) Within five business days following receipt of the copy of the request, the carrier shall determine whether:

(i) the individual is or was a covered person in the health benefit plan;

(ii) the health care service that is the subject of the adverse benefit determination is a covered expense;

(iii) the claimant has exhausted the carrier's internal review process; and

(iv) the claimant has provided all the information and forms required to process an independent review.

(c)(i) Within one business day after completion of the preliminary review, the carrier shall notify the commissioner and claimant in writing whether:

(A) the request is complete; and

(B) the request is eligible for independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall inform the claimant and commissioner in writing the reasons for ineligibility.

(iii) If the carrier determines that the request for independent review is ineligible, the carrier's notice of ineligibility shall inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for independent review notwithstanding the carrier's initial determination that the request is ineligible and require that the request be referred for independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the claimant's health benefit plan and shall be subject to all applicable provisions of this rule.

(5) Upon receipt of the carrier's preliminary determination, the commissioner shall:

(a)(i) assign on a random basis an independent review organization from the list of approved independent review organizations based on the nature of the health care service that is the subject of the review;

(ii) notify the carrier of the assignment; and

(b) notify the claimant that the request has been accepted and that the claimant may submit additional information to the independent review organization within five business days of receipt of the commissioner's notification..

(5) Within 45 calendar days after receipt of the request for an independent review, the independent review organization shall provide written notice of its decision to uphold or reverse the adverse benefit determination to:

(a) the claimant;

(b) the carrier; and

(c) the commissioner.

(6) The independent review decision is binding on the carrier and claimant except to the extent that other remedies are available under federal or state law.

R590-261-11. Expedited Independent Review.

(1) An expedited independent review process shall be available if the adverse benefit determination:

(a) involves a medical condition of the claimant which would seriously jeopardize the life or health of the claimant or would jeopardize the claimant's ability to regain maximum function; or

(b) in the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the adverse benefit determination.

(2) The independent review organization shall as soon as possible, but no later than 72 hours after receipt of the request for an expedited independent review, make a decision to uphold or reverse the adverse benefit determination and notify the carrier and claimant.

R590-261-12. Independent Review of Experimental or Investigational Treatment Adverse Benefit Determinations.

(1) The claimant has 180 calendar days after the receipt of an adverse benefit determination that involves a denial of coverage based on a determination that the service or treatment recommended or requested is experimental or investigational to file a request with the commissioner for an independent review.

(2) In addition to the requirements for an independent review set forth in Sections 9 and 10, the following apply to an independent review involving experimental or investigational treatment:

(a) the request for an independent review based on experimental or investigational treatment shall be submitted with certification from the claimant's physician that:

(i) standard health care services or treatments have not been effective in improving the claimant's condition;

(ii) standard health care service or treatment is not medically appropriate for the claimant; or

(iii) there is no available standard health care service or treatment covered by the carrier that is more beneficial than the recommended or requested health care service or treatment.

(b) Within one business day after receipt of the request, the independent review organization shall select one or more clinical reviewers to conduct the review.

(c) The clinical reviewer shall provide to the independent review organization a written opinion within 20 calendar days after being selected.

(d) The independent review organization shall make a decision based on the clinical reviewer's opinion within 20 calendar days of receiving the opinion and shall notify the:

(i) claimant;

(ii) carrier; and

(iii) commissioner.

R590-261-13. Disclosure Requirements.

(1) Each carrier shall include a description of the independent review procedure in or attached to the policy and certificate, and may include a description with other evidence of coverage provided to the insured.

(2) The description required in Subsection (1) shall include a statement that informs the insured:

(a) of the right to file a request for an independent review of a final adverse benefit determination and include the contact information for the commissioner; and

(b) that an authorization to obtain medical records may be required for the purpose of reaching a decision.

R590-261-14. Records.

(1) An independent review organization shall maintain a written record of each independent review for the current year plus 5 years.

(2) The records of an independent review organization shall be available for review by the commissioner upon request.

R590-261-15. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-261-16. Enforcement Date.

The commissioner shall begin enforcing the provisions of this rule July 1, 2011.

R590-261-17. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health benefit plan insurance
Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Law: 31A-22-629; 31A-2-201; 31A-2-212

Labor Commission, Adjudication
R602-1
General Provisions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34728
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Under authority granted to the Labor Commission by H.B. 188, enacted by the 2011 General Session of the Utah Legislature, the proposed amendment establishes standards and procedures for electronic delivery of documents in proceedings before the Commission's Adjudication Division. (DAR NOTE: H.B. 188 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: Section R602-1-3 is amended to add requirements that legal counsel provided electronic addresses for themselves and their clients. Failure to provide a client address constitutes consent to deliver the client's documents to the client's attorney. Section R602-1-4 is amended to provide that, subject to some exceptions specified elsewhere in Title R602, a document required or permitted to be filed in adjudicative proceedings may be delivered electronically using "PDF" format. Section R602-1-4 is further amended to require that electronically transmitted documents include delivery information. Finally, Section R602-1-4 provides that, in cases where a party submits more than one copy of a document, the first copy will be treated as the official version and subsequent versions will not be retained by the Division.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-302 and Section 34A-1-304 and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no costs to the state budget associated with the proposed rule amendments. However, by allowing the Adjudication Division to deliver adjudicative documents electronically instead of by mail, the Division will marginally reduce its postage and paper costs, thereby resulting in some minor savings to the state budget.

♦ LOCAL GOVERNMENTS: No costs to local government are associated with the proposed rule amendments. However, by allowing local governments participating in proceedings before the Adjudication Division to deliver adjudicative documents electronically instead of by mail, local governments will marginally reduce postage and paper costs, thereby resulting in some minor savings.

♦ SMALL BUSINESSES: No costs to small businesses are associated with the proposed rule amendments. However, by allowing small businesses to deliver adjudicative documents electronically instead of by mail, small businesses will marginally reduce postage and paper costs, thereby resulting in some minor savings.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons participating in proceedings before the Adjudication Division will experience the same minor savings as small businesses from electronic delivery of documents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In view of the wide availability and acceptance of electronic means for sending and receiving documents, the Commission does not expect the proposed rule to result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While the Commission expects participants in its adjudicative proceedings to experience some cost savings as a result of electronic document delivery, the Commission views convenience, speed and efficiency as the more significant benefits to be realized from these proposed amendments.

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

LABOR COMMISSION
ADJUDICATION
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:
♦ Richard Lajeunesse by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.
R602-1. General Provisions.
R602-1-3. Representatives at Adjudicative Proceedings.

1. Representatives who are not duly admitted and licensed to practice law in Utah shall not be allowed to appear on behalf of a party before the Adjudication Division.

2. Individuals who are parties to an adjudicative proceeding before the Adjudication Division may appear pro se.

3. Corporations who are parties to an adjudicative proceeding before the Adjudication Division shall be represented by legal counsel who are duly admitted to practice law in Utah.

4. All legal counsel who appear on behalf of a party before the Adjudication Division are required to file with the Division the electronic address to receive delivery of documents in adjudicative proceedings before the Division.

5. All legal counsel who deliver documents to the Adjudication Division on behalf of a party shall include the e-mail address of the party represented to receive delivery of documents in adjudicative proceedings before the Division. Failure to provide a party's electronic address gives the Adjudication Division consent to deliver that party's document(s) to their attorney of record.

R602-1-4. Filing of Documents.

1. Pursuant to Section 34A-1-304 and subject to the limitations and requirements of this rule, a document required or permitted by statute or rule may be delivered by electronic means. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing, electronic transmittal[~~to~~], or service on, all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

3. Delivery by electronic transmittal is limited to documents in PDF format delivered to sites specified by the Adjudication Division or the Commission. Documents delivered by electronic transmittal must include signatures. Electronic documents filed in non-PDF format are not considered delivered to the Division of Adjudication.

4. Each electronically transmitted document shall include a delivery certificate that lists the time and date on which the document was transmitted, the name of the person who transmitted the document, and the name and email address of each person or entity to which the document was transmitted. If a party utilizes delivery by electronic transmittal, the document filed must include an electronic address where the party may receive documents. The Adjudication Division and all opposing parties may use electronic transmittal as the sole method of delivery to that party.

5. The first document delivered to the Adjudication Division becomes the original document filed. Any copies of the document filed with the Adjudication Division will not be retained.

KEY: witness fees, time, administrative procedures, filing deadlines
Date of Enactment or Last Substantive Amendment: [~~November 25, 2008~~]2011
Notice of Continuation: August 15, 2007
Authorizing, and Implemented or Interpreted Law: 34A-1-302; 34A-1-304; 63G-4-102 et seq.

Labor Commission, Adjudication
R602-2-1
Pleadings and Discovery

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34729
FILED: 04/28/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Under authority granted to the Labor Commission by H.B. 188, enacted by the 2011 General Session of the Utah Legislature, and in conjunction with amendments that are currently pending for Rule R602-1, the proposed amendment establishes standards and procedures for electronic delivery of documents in proceedings before the Commission's Adjudication Division in workers' compensation and occupational disease claims for benefits. (DAR NOTE: The proposed amendment to Rule R602-1 is under DAR No. 34728 in this issue, May 15, 2011, of the Bulletin. H.B. 188 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: Section R602-2-1 is amended to add a definition of "designated agent" and to require such designated agents to provide an electronic address to the Division for electronic delivery of documents. Section 602-2-1 specifically permits electronic delivery of discovery documents, but prohibits electronic filing of medical records.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-301 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no costs to the state budget associated with the proposed rule amendments. However, by allowing the Adjudication Division to deliver adjudicative documents electronically instead of by mail, the Division will marginally reduce its postage and paper costs, thereby resulting in some minor savings to the state budget.
♦ LOCAL GOVERNMENTS: No costs to local government are associated with the proposed rule amendments. However, by allowing local governments participating in proceedings before the Adjudication Division to deliver adjudicative documents electronically instead of by mail, local governments will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ SMALL BUSINESSES: No costs to small businesses are associated with the proposed rule amendments. However, by allowing small businesses to deliver adjudicative documents electronically instead of by mail, small businesses will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons participating in proceedings before the Adjudication Division will experience the same minor savings as small businesses from electronic delivery of documents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In view of the wide availability and acceptance of electronic means for sending and receiving documents, the Commission does not expect the proposed rule to result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While the Commission expects participants in its adjudicative proceedings to experience some cost savings as a result of electronic document delivery, the Commission views convenience, speed and efficiency as the more significant benefits to be realized from these proposed amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ADJUDICATION
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:
♦ Richard Lajeunesse by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents

shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102et seq.

3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production

of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

KEY: workers' compensation, administrative procedures, hearings, settlements
Date of Enactment or Last Substantive Amendment: [~~August 24, 2009~~|2011
Notice of Continuation: August 15, 2007
Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.

Labor Commission, Adjudication
R602-4-4
Pleadings and Discovery

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34732
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Under authority granted to the Labor Commission by H.B. 188, enacted by the 2011 General Session of the Utah Legislature, and in conjunction with amendments that are currently pending for Rule R602-1, the proposed amendment establishes procedures for electronic delivery of documents in proceedings before the Commission's Adjudication Division. (DAR NOTE: The proposed amendment to Rule R602-1 is under DAR No. 34728 in this issue, May 15, 2011, of the Bulletin. H.B. 188 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: Section R602-4-4 is amended to allow for submission of electronic documents in Adjudicative Proceedings for Termination of Temporary Total Disability Compensation. There is also a nonsubstantive spelling correction.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-2-410.5 and Subsection 34A-1-104(1) et seq.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no costs to the state budget associated with the proposed rule amendments. However, by allowing the Adjudication Division to deliver adjudicative documents electronically instead of by mail, the Division will marginally reduce its postage and paper costs, thereby resulting in some minor savings to the state budget.
♦ LOCAL GOVERNMENTS: No costs to local government are associated with the proposed rule amendments. However, by allowing local governments participating in proceedings before the Adjudication Division to deliver adjudicative documents electronically instead of by mail, local governments will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ SMALL BUSINESSES: No costs to small businesses are associated with the proposed rule amendments. However, by allowing small businesses to deliver adjudicative documents electronically instead of by mail, small businesses will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons participating in proceedings before the Adjudication Division will experience the same minor savings as small businesses from electronic delivery of documents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In view of the wide availability and acceptance of electronic means for sending and receiving documents, the Commission does not expect the proposed rule to result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While the Commission expects participants in its adjudicative proceedings to experience some cost savings as a result of electronic document delivery, the Commission views convenience, speed and efficiency as the more significant benefits to be realized from these proposed amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ADJUDICATION
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:
♦ Richard Lajeunesse by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.
R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410.5.
R602-4-4. Pleadings and Discovery.

A. Definitions.

1. "Application" means an Application for Hearing for Termination or Reduction of Compensation (Adjudication Form 402), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404) which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

2. "Supporting medical documentation" means any medical provider's report or treatment note that addresses the employee's medical condition or functional restrictions.

3. "Supporting documents" means supporting medical documentation. Persons with Knowledge List (Adjudication Form 403), any documents related to reasons for the requested termination or reduction, and any documents describing the employee's work duties.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employer or insurer's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the reasons for the request to terminate or reduce compensation. The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the party will produce the person as a witness at hearing.

6. "Notice of Request for Termination or Reduction of Compensation" means Adjudication Form 404.

7. "Petitioner" means the employer who has filed an Application for Hearing.

8. "Respondent" means the employee against whom the Application for Hearing was filed.

B. Application for Hearing.

1. An employer may request Commission approval to terminate or reduce an employee's temporary disability compensation under section 34A-2-410.5 by filing an Application with the Commission' Adjudication Division.

2. An Application is not deemed filed with the Division until the employer submits a completed Application with all required documentation.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employer will also mail to or otherwise serve on the employee a copy of all exhibits the employer intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-410.5 shall only be issued at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

E. Hearings.

1. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearings [~~by regular mail~~]to the addresses of the employer and employee set forth on the Application. A party must immediately notify the Division of any change or correction [~~fo~~]of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

2. Hearings.

Each hearing pursuant to section 34A-2-410.5 shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

F. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-1-303, and R602-2-1(M).

KEY: workers' compensation, administrative procedures, hearings, settlements
Date of Enactment or Last Substantive Amendment: [~~November 25, 2008~~]2011
Authorizing, and Implemented or Interpreted Law: 34A-1-104(1) et seq.; 34A-2-410.5

Labor Commission, Adjudication
R602-7
Adjudication of Discrimination Claims

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34730
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Under authority granted to the Labor Commission by H.B. 188, enacted by the 2011 General Session of the Utah Legislature, and in conjunction with amendments that are currently pending for Rule R602-1, the proposed amendment establishes standards and procedures for electronic delivery of documents in proceedings before the Commission's Adjudication Division to adjudicate claims of unlawful discrimination. The proposed amendment also clarifies and explains existing rules or practices in such proceedings. (DAR NOTE: The proposed amendment to Rule R602-1 is under DAR No. 34728 in this issue, May 15, 2011, of the Bulletin. H.B. 188 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: Section R602-7-3 is amended to require submission of electronic addresses while eliminating an existing requirement for submission of a copy of the Antidiscrimination and Labor Division's determination. Section R602-7-3 also modifies provisions related to scheduling conferences by granting discretion to the Division to hold such conferences. Section R602-7-3 requires respondents in these proceedings to submit an answer and specifies the required contents of such answers. Finally, Section R602-7-3 specifically provides that discovery and disclosure documents may be delivered electronically, and also provides responses to motions must generally be filed within 10 days after the motion is filed. The remaining changes to the rule are either nonsubstantive spelling corrections or supporting citations to other rules and statutes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-5-107 and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no costs to the state budget associated with the proposed rule amendments. However, by allowing the Adjudication Division to deliver adjudicative documents electronically instead of by mail, the Division will marginally reduce its postage and paper costs, thereby resulting in some minor savings to the state budget.

♦ LOCAL GOVERNMENTS: No costs to local government are associated with the proposed rule amendments. However, by allowing local governments participating in proceedings before the Adjudication Division to deliver

adjudicative documents electronically instead of by mail, local governments will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ SMALL BUSINESSES: No costs to small businesses are associated with the proposed rule amendments. However, by allowing small businesses to deliver adjudicative documents electronically instead of by mail, small businesses will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons participating in proceedings before the Adjudication Division will experience the same minor savings as small businesses from electronic delivery of documents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In view of the wide availability and acceptance of electronic means for sending and receiving documents, the Commission does not expect the proposed rule to result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While the Commission expects participants in its adjudicative proceedings to experience some cost savings as a result of electronic document delivery, the Commission views convenience, speed and efficiency as the more significant benefits to be realized from these proposed amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ADJUDICATION
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:
♦ Richard Lajeunesse by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.
R602-7. Adjudication of Discrimination Claims.
R602-7-3. Adjudication of Actions Commenced Pursuant to Section 34A-5-107(5)(c).

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Request for De Novo Review" pursuant to Section 34A-5-107(5)(c) means a written request filed with the Commission and directed to the Division requesting de novo review of a specific Determination and Order issued by the Utah Antidiscrimination and Labor Division and shall include the following:

A. the name, mailing address, electronic address and telephone number of the party seeking de novo review and of their attorney, if applicable.

B. the name, mailing address, electronic address and telephone number of the opposing parties and of their attorney if applicable.

C. the date the Determination and Order was issued by the Utah Antidiscrimination Division.

D. a request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

[~~E. a copy of the initial Charge of Discrimination filed with the Utah Antidiscrimination Division and a copy of the Determination and Order.~~

] iv. "Petitioner" means the charging party in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

v. "Respondent" means the respondent in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

b. Scheduling Conference and Order.

Upon receipt of the Request for De Novo Review the Division [~~will~~]may schedule a scheduling conference to be attended by the parties and[~~/or~~], where required by R602-1-3.1, their attorneys. [~~Following the scheduling conference t~~]The Division will issue a Scheduling Order containing deadlines and requirements for the filing of Petitioner's Statement, deadlines and requirements for the filing of Respondent's Answer, discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Respondent's Answer.

The Respondent's Answer shall include:

i. the name, mailing address, electronic address and telephone number of the party;

ii. the Adjudication Division's file number;

iii. the name of the adjudicative proceeding;

iv. an admission or denial of the specific facts alleged by the Petitioner.

v. any affirmative defenses relied on by the Respondent and specific facts in support of the affirmative defenses.

vi. a statement summarizing the reasons that the relief requested by the Petitioner should be denied.

vii. the signature of the person filing Respondent's Answer.

[e]d. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of damages claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. Unless otherwise stipulated by the parties or ordered by the administrative law judge, the disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures and other discovery. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures and discovery shall be made in writing, signed and served. Discovery and disclosure documents may be delivered by electronic means.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

(Aa) Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against

disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C.P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty [~~reseasonably~~]reasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Respondent's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form or requirement for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or

expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon his or her own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas.

Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302(c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

d. Notices

i. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

ii. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

2. Motions - Time to Respond.

Unless otherwise provided by statute or the Administrative Law Judge, responses to all motions shall be filed within ten (10) days from the date the motion was filed with the Adjudication Division.

R602-7-4. Hearings.

1. Evidentiary hearings shall be conducted formally in accordance with Utah Code Section 63G-4-206. The petitioner shall have the burden of proving the claim of discrimination by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208 and Utah Administrative Rule R602-1-4.

2. In those cases where the Utah Antidiscrimination and Labor Division in its Determination and Order made a reasonable cause finding, the Utah Antidiscrimination and Labor Division shall be given an opportunity at the evidentiary hearing to briefly outline the basis of its Determination. The presentation by the Utah Antidiscrimination and Labor Division shall not be considered evidence by the administrative law judge in issuing an order.

R602-7-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Division in accordance with the provisions of Utah Code Subsection 34A-5-107 (11), [~~and~~]63G-4-301 and Utah Administrative Rule R602-1-4. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-7-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petition[~~er~~] for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401 and Utah Administrative Rule R602-1-4.

KEY: discrimination, administrative procedures, hearings, settlements
Date of Enactment or Last Substantive Amendment: [~~May 22, 2009~~]2011
Authorizing, and Implemented or Interpreted Law: 34A-5-107; 63G-4-102 et seq.

Labor Commission, Adjudication
R602-8
Adjudication of Utah Occupational Safety and Health Citation Claims

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34731
FILED: 04/28/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Under authority granted to the Labor Commission by H.B. 188, enacted by the 2011 General Session of the

Utah Legislature, and in conjunction with amendments that are currently pending for Rule R602-1, the proposed amendment establishes standards and procedures for electronic delivery of documents in proceedings before the Commission's Adjudication Division to adjudicate cases arising from the Utah Occupational Safety and Health Act. The proposed amendment also clarifies and explains existing rules or practices in such proceedings. (DAR NOTE: The proposed amendment to Rule R602-1 is under DAR No. 34728 in this issue, May 15, 2011, of the Bulletin. H.B. 188 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: Section R602-8-3 is amended to require submission of electronic addresses while eliminating an existing requirement for submission of a copy of the Occupational Safety and Health Divisions' citation. Section R602-8-3 also modifies provisions related to scheduling conferences by granting discretion to the Division to hold such conferences. Finally, Section R602-8-3 specifically provides that discovery and disclosure documents may be delivered electronically, and also provides responses to motions must generally be filed within 10 days after the motion is filed. The remaining changes to the rule are either nonsubstantive spelling corrections or supporting citations to other rules and statutes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-6-105 and Section 34A-6-303 and Section 34A-6-304 and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no costs to the state budget associated with the proposed rule amendments. However, by allowing the Adjudication Division to deliver adjudicative documents electronically instead of by mail, the Division will marginally reduce its postage and paper costs, thereby resulting in some minor savings to the state budget.
♦ LOCAL GOVERNMENTS: No costs to local government are associated with the proposed rule amendments. However, by allowing local governments participating in proceedings before the Adjudication Division to deliver adjudicative documents electronically instead of by mail, local governments will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ SMALL BUSINESSES: No costs to small businesses are associated with the proposed rule amendments. However, by allowing small businesses to deliver adjudicative documents electronically instead of by mail, small businesses will marginally reduce postage and paper costs, thereby resulting in some minor savings.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons participating in proceedings before the Adjudication Division will experience the same minor savings as small businesses from electronic delivery of documents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In view of the wide availability and acceptance of electronic means for sending and receiving documents, the Commission does not expect the proposed rule to result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While the Commission expects participants in its adjudicative proceedings to experience some cost savings as a result of electronic document delivery, the Commission views convenience, speed and efficiency as the more significant benefits to be realized from these proposed amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ADJUDICATION
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:
♦ Richard Lajeunesse by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.
R602-8. Adjudication of Utah Occupational Safety and Health Citation Claims.
R602-8-3. Adjudication of Actions Commenced Pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Notice of Contest" pursuant to Section 34A-6-303 means a written request filed with the Commission and directed to the Division requesting an evidentiary hearing on a citation issued by the Utah Occupational Safety and Health Division and shall include the following:

A. the name, mailing address, electronic address and telephone number of the party filing the Notice of Contest and that of their attorney, if applicable.

B. the date and number of the citation issued by the Utah Occupational Safety and Health Division.

C. An admission or denial of the specific facts alleged in support of each violation alleged in the citation and a statement of agreement or disagreement with each proposed penalty set forth in the citation.

D. Any affirmative defenses relied on by the cited party and specific facts in support of the affirmative defenses.

E. A request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

F. A statement requesting or declining an informal conference with the Administrator of Utah Occupational Safety and Health Division.

[~~G. A copy of the citation issued by Utah Occupational Safety and Health Division.~~

] iv. "Petitioner" means Utah Occupational Safety and Health Division.

v. "Respondent" means the person or entity cited by Utah Occupational Safety and Health Division.

b. Scheduling Conference and Order.

Upon receipt of the Notice of Contest the Division [~~will~~]may schedule a scheduling conference to be attended by the parties and[~~/or~~], where required by R602-1-3.1, their attorneys. [~~Following the scheduling conference t~~]The Division will issue a Scheduling Order containing deadlines and requirements for the litigation including discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of fines or penalties claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. The disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the Administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures and other discovery. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures and discovery shall be made in writing, signed and served. Discovery and disclosure documents may be delivered by electronic means.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

Aa. Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

Aa. A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty [~~reseasonably~~]reasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated

discovery plan. Petitioner's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas. Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302 (c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

2. Notices

a. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

b. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

3. Motions - Time to Respond.

Unless otherwise provided by statute or the Administrative Law Judge, response to all motions shall be filed within ten (10) days from the date the motion was filed with the Adjudication Division.

R602-8-4. Hearings.

Evidentiary hearing shall be conducted formally in accordance with Utah Code Section 63G-4-206. Petitioner shall have the burden of proving the factual and legal sufficiency of the citation and penalty by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208 and Utah Administrative Rule R602-1-4.

R602-8-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Utah Code Sections 34A-6-304, [~~and~~]63G-4-301 and Utah Administrative Rule R602-1-4. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-8-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petitioner for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401 and Utah Administrative Rule R602-1-4.

KEY: occupational safety and health, administrative procedures, hearings, settlements
Date of Enactment or Last Substantive Amendment: [~~May 22, 2009~~]2011
Authorizing, and Implemented or Interpreted Law: 34A-6-105; 34A-6-303; 34A-6-304; 63G-4-102 et seq.

Labor Commission, Industrial Accidents
R612-12
Reporting Requirements for Workers' Compensation Coverage Waivers

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 34725
FILED: 04/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 31A-22-1011 authorizes workers' compensation insurance carriers to issue coverage waivers to business entities with no employees. Effective 07/01/2011, S.B. 191 (2011 General Session) will repeal Section 31A-22-1011 and enacted the Workers' Compensation Coverage Waivers Act, Section 34A-2-1001 et seq. The Act transfers responsibility for issuing coverage waivers from insurance carriers to the Utah Labor Commission. The Act also defines terms, specifies the information a business entity must submit to obtain a waiver, authorizes the Labor Commission to charge fees for coverage waivers, and makes other technical changes. The Labor Commission's existing Rule R612-12 addresses issues related to coverage waivers issued by insurance carriers under Section 31A-22-1011. Because that provision of law has been repealed by S.B. 191 and replaced with the Workers' Compensation Coverage Waivers Act, the Labor Commission proposes to repeal the existing Rule R612-12 and adopt a new Rule R612-12 to addresses the Labor Commission's responsibilities for issuing coverage waivers.

SUMMARY OF THE RULE OR CHANGE: The old rule provided that the waiver be issued by insurance carriers; this will no longer be the case as of 07/01/2011, when waivers will then be issued by the Commission. Section R612-12-2 provides that the coverage waiver program will be administered by the Labor Commission's Division of Industrial Accidents. Section R612-12-3 establishes procedures for business entities to apply for coverage waivers, lists the types of documentation a business entity must submit in order to qualify for a coverage waiver, and requires payment of a $50 application fee. Section R612-12-4 specifies that coverage waivers previously issued by insurance carriers pursuant to Section 31A-22-1011 remain in effect until their stated expiration date; coverage waivers issued by the Labor Commission pursuant to the Workers' Compensation Coverage Waivers Act will remain effective for a period of one year. Section R612-12-4 also addresses renewal and revocation of coverage waivers. Section R612-12-5 provides for Labor Commission review of decisions by the Division of Industrial Accidents to deny or revoke waiver certificates. Section R612-12-6 explains the effect and limitations of coverage waivers. R612-12-6 specifically provides that an employer seeking to rely on a coverage waiver provided by a business entity must retain: 1) a copy of the coverage waiver; and 2) a printout from the Division's web page showing that the coverage waiver has not been revoked as of the date on which the employer contracted with the business entity.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-104 and Section 34A-2-101 et seq. and Section 34A-3-101 et seq. and Section 78B-8-402 and Section 78B-8-404

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The proposed rule has no fiscal impact on the state budget. Any costs or savings associated with the Labor Commission's issuance of coverage waivers are the result of S.B. 191 and have been addressed by the fiscal note attached to that bill.
♦ LOCAL GOVERNMENTS: Not affected because waivers only apply to companies that are owner operated.
♦ SMALL BUSINESSES: The proposed rule has no effect on small businesses that have one or more employees, since such business do not qualify for coverage waivers under existing law (Section 31A-22-1011) or under the new Workers' Compensation Coverage Waiver Act enacted by S.B. 191. As to small businesses with no employees, the proposed rule does not change the existing conditions for obtaining a coverage waiver. Likewise, the $50 coverage waiver application fee required by the proposed rule is the same amount that insurance carriers have been charging for coverage waivers. Consequently, the proposed rule will not result in any additional costs or savings to small business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because coverage waivers are available only to a statutorily-defined class of business entities, the proposed rule will have no financial impact on persons other than small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Business entities applying for coverage waivers must submit an application fee of $50 to the Labor Commission. This is the same fee that insurance carriers are currently charging for such waivers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Workers' Compensation Coverage Waivers Act enacted by S.B. 191 does not change the substance of Utah's coverage waivers program; it merely transfers responsibility for administering the program from insurance carriers to the Labor Commission. The only additional paperwork requirement established by the proposed rule is the obligation of those seeking to rely upon a coverage waiver to retain copies of: 1) the coverage waiver and 2) verification from the Labor Commission's website that the waiver remains in effect. Any cost associated with this requirement will be negligible.

In summary, the Labor Commission does not expect the proposed rule to have any fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R612. Labor Commission, Industrial Accidents.

[~~R612-12. Reporting Requirements for Workers' Compensation Coverage Waivers.~~

~~R612-12-1. Authority.~~

~~This rule is enacted under the authority of U.C.A. Sections 34A-1-104, 31A-22-1011, and 63G-3.~~

~~R612-12-2. Time Period for Insurance Carriers to File Waiver Report.~~

~~Insurance carriers issuing a waiver pursuant to Section 31A-22-1011 shall file with the Labor Commission a report, as required by this section, once monthly but in any event no later than the 5th of each month or the first business day thereafter.~~

]**R612-12. Workers' Compensation Coverage Waivers.**

R612-12-1. Authority and Purpose.

This rule is enacted under authority of 34A-1-104 of the Utah Labor Commission Act and Title 34A, Chapter Two, Part One, the Workers' Compensation Coverage Waivers Act ("the Act"). The purpose of this rule is to establish procedures for workers' compensation coverage waivers ("coverage waivers"). The rule also addresses the effect of coverage waivers and the adjudicative procedures to be followed by the Division in granting, denying, or revoking coverage waivers.

R612-12-2. Administration by Industrial Accidents Division.

Except as otherwise provided, the Utah Labor Commission's Division of Industrial Accidents ("Division") shall administer the provisions of the Act and this rule.

R612-12-3. Procedure for Application and Issuance of Certificate.

A. A business entity may apply for a coverage waiver by completing a form provided by the Commission, submitting required supporting documents, and paying a fee of $50. The Division's determination of whether to grant or deny a request for coverage waiver shall be conducted as informal proceedings under the Utah Administrative Procedures Act.

B. Supporting documents. 34A-2-1004 of the Workers' Compensation Coverage Waivers Act requires a business entity to submit the following documentation to support its request for a coverage waiver:

(1) a copy of two or more of the following:

(a) the business entity's federal or state income tax return that shows business income for the complete taxable year that immediately precedes the day on which the business entity submits the information;

(b) a valid business license;

(c) a license to engage in an occupation or profession, including a license under Title 58, Occupations and Professions; or

(d) documentation of an active liability insurance policy that covers the business entity's activities; or

(2) a copy of one item listed in Subsection (1) and a copy of two or more of the following:

(a) proof of a bank account for the business entity;

(b) proof that for the business entity there is:

(i) a telephone number; and

(ii) a physical location; or

(c) an advertisement of services in a newspaper of general circulation or telephone directory showing the business entity's:

(i) name; and

(ii) contact information.

C. Fee. A business entity applying for a workers' compensation coverage waiver certificate shall submit payment of a fee of $50.00. Such fees are used to defray the costs of processing and evaluating the application and are nonrefundable. If payment of the fee is made by check, the Division may delay issuance of a coverage waiver until it has verified that the check will be honored.

D. Issuance or Denial of Certificate. If the Division determines that a business entity has satisfied each requirement for a coverage waiver, the Division will issue the coverage waiver. If the Division determines that a business entity has not satisfied each requirement for a workers' compensation insurance waiver, the Division will issue a written denial to the business entity, stating the basis for denial and setting forth the business entity's appeal rights.

R612-12-4. Duration, Renewal and Revocation.

A. Duration. Subject to revocation of a coverage waiver as provided by subparagraph C. of this section, a coverage waiver remains in effect for the following time periods:

1. A coverage waiver issued by a licensed workers' compensation insurance company prior to July 1, 2011, the effective date of the Workers' Compensation Coverage Waivers Act, shall remain effective for the period shown on the coverage waiver.

2. A coverage waiver issued by the Division after July 1, 2011, shall be effective for one year from the date the coverage waiver is issued.

B. Renewal. The Division will renew a business entity's coverage waiver if:

1. The business entity requests renewal; and

2. The business entity satisfies all requirements in effect at the time of the renewal request.

C. Revocation. If the Division has reason to believe that a business entity no longer qualifies for a coverage waiver, the Division shall institute proceedings to determine whether the business entity's coverage waiver should be revoked. Such proceedings shall be conducted as informal proceedings under the Utah Administrative Procedures Act. If the Division concludes that the business entity does not satisfy each requirement for a workers' compensation insurance waiver, the Division will issue a written order revoking the waiver certificate, stating the basis for revocation, and setting forth the business entity's appeal rights. TDivision may also initiate other proceedings authorized by the Utah Workers' Compensation Act to compel the business entity to obtain workers' compensation coverage for its employees.

R612-12-5. Review of Division Decisions to Deny or Revoke Waiver Certificate.

A business entity may challenge a Division decision to deny or revoke the business entity's coverage waiver by filing an appeal of the decision with the Commission's Adjudication Division. Such appeal proceedings shall be assigned to an administrative law judge and conducted as de novo formal adjudicatory proceedings pursuant to the Utah Administrative Procedures Act.

R612-12-6. Effect, Verification and Limitation of Coverage Waiver.

A. Effect of coverage waiver. 34A-2-103 (7) (c) permits an employer contracting with a business entity to rely upon a valid coverage waiver issued by the Division as proof that the business entity is not required to have a workers' compensation insurance policy.

B. Verification of coverage waiver. An employer seeking to rely upon a business entity's coverage waiver shall retain the following documents:

1. A photocopy of the coverage waiver issued to the business entity by the Division; and

2. A printout of the Division's web page showing that the business entity's coverage waiver had not been revoked as of the date on which the employer contracted with the business entity.

C. Limitations to effect of coverage waiver. A coverage waiver does not excuse a business entity from obtaining and maintaining workers' compensation insurance coverage for employees who are entitled to such coverage under the Utah Workers' Compensation Act. If and when a business entity has such employees, any coverage waiver previously issued to that business entity becomes void and the business entity must immediately obtain workers' compensation coverage.

KEY: workers' compensation, administrative procedures, reporting, settlements
Date of Enactment or Last Substantive Amendment: [~~August 11, 2008~~|2011
Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104; 78B-8-402; 78B-8-404

Natural Resources; Forestry, Fire and State Lands
R652-150
Utah Bioprospecting Act

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 34763
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The State of Utah recognizes, that due to the microenvironments present on state lands, there is a potential for unique organisms to have evolved that represent a valuable resource for the residents of the state. This bioprospecting rule has been enacted to foster the discovery and evaluation of these resources in a way that benefits the citizens of Utah. By registration of bioprospecting the state reserves the right for the citizens to share in any future economic value of these resources.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the registration process and requirements for bioprospecting on state lands in the State of Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-14-101

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs for the processing of the registration, but any costs incurred will be covered by the registration fee.
♦ LOCAL GOVERNMENTS: The proposed rule will not result in direct, measurable costs or benefits for local governments.
♦ SMALL BUSINESSES: There may be a costs to small businesses if the business engages in the act of bioprospecting, as they would be required to register with the division and pay a registration fee.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: A person who engages in bioprospecting will be required to register with the division and pay a registration fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons will need to pay a registration fee to the division in the amount of $50.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would be a $50 fee and registration requirement.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Richard Buehler, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-150. Utah Bioprospecting Act.
R652-150-100. Authority and Purpose.

This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-14-101 et seq., to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct bioprospecting activities.

The State of Utah recognizes, that due to the microenvironments present on State lands, there is a potential for unique organisms to have evolved that represent a valuable resource for the residents of the State. This Bioprospecting rule has been enacted to foster the discovery and evaluation of these resources in a way that benefits the citizens of Utah. By registration of Bioprospecting the State reserves the right for the citizens to share in any future economic value of these resources

R652-150-200. Definitions.

1. Bioprospecting: the removal from a natural environment for research or commercial use of a naturally occurring microorganism, plant, or fungus; or information concerning a naturally occurring microorganism's, plant's, or fungus' physical or genetic properties.

2. Nonfederal public land: land within the state that:

(a) is not owned, controlled, or held in trust by the federal government; and

(b)(i) is owned or controlled by:

(A) the state;

(B) a county, city, or town; or

(C) a governmental entity other than the federal government; or

(ii) is school and institutional trust lands, as defined in Section 53C-1-103.

3. Bioprospector: a person who engages in bioprospecting.

4. Person means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

(f) any combination acting in concert with one another.

R652-150-300. Exceptions.

For purposes of Section 65A-14-101 et seq., and this rule, the following entities and/or activities are exempt from the requirements of this rule:

1. horticultural cultivation, except for horticultural genetic engineering conducted in a manner otherwise constituting bioprospecting;

2. an agricultural enterprise;

3. a forest and range management practice;

4. invasive weed management;

5. Christmas tree and related sales; and

6. incidental removal of a microorganism, plant, or fungus while engaged in bona fide research or commercial enterprises.

This rule does not modify or replace any other requirement under federal, state, or local law related to an act that under Section 65A-14-101 et seq. is considered bioprospecting, including any requirement to obtain the permission of a landowner. In addition, this rule applies only to bioprospecting activities occurring on non-federal public land.

R652-150-400. Procedures for Registration.

1. Registration Form. To register for bioprospecting activities, a person or entity shall complete and submit a registration form provided by the Division as specified in R652-3.

2. Time of Filing. The registration form shall be submitted to the Division's headquarter office, at 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703 during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, shall be immediately stamped with the exact date of filing.

3. Non-refundable Registration Fees. All registration forms shall be accompanied with a non-refundable registration fee, to be determined by the Division, as specified in R652-4.

4. Registration Form Review. Upon receipt of the registration form, the Division will review the form for completeness. If the registration form is deemed complete, the Division will acknowledge receipt and approval of requested registration by providing the person or entity a written correspondence to include a registration number, the date of registration expiration and a copy of the processed registration form included as an attachment.

R652-150-500. Term of Registration.

Registration shall be valid until June 30 of the current fiscal year. A registrant must renew the registration with the Division for any continuing activities into the new fiscal year by submitting a completed registration form to the Division as specified in R652-150-400.

R652-150-600. Reservation of Economic Interest.

1. The right of a person to engage in an act of bioprospecting is subject to the State's reservation of any right the State may have to an economic benefit derived from:

(a) the act of bioprospecting;

(b) a microorganism, plant, or fungus removed from a natural environment in the state; or

(c) information concerning a microorganism's, plant's, or fungus' physical or genetic properties removed from a natural environment in the state.

2. A person may not engage in an act of bioprospecting in this state if the person, as part of the registration required under Section 65A-14-201, does not agree in writing to negotiate in good faith with the State if the State asserts an economic interest described in R652-150-600-1.

3. Registrants shall record GPS coordinates of the sites where samples are gathered and provide those coordinates to the Division and include those coordinates in any publications resulting from the bioprospecting.

R652-150-700. Economic Benefits of Bioprospecting Denied.

1. A person who engages in an act of bioprospecting in violation of Section 65A-14-101 et seq. and this rule is guilty of criminal trespass punishable in accordance with Section 76-6-206.

2. If found guilty of a violation under Section 65A-14-101 et seq. or this rule, a court may in addition to a penalty imposed under Section 76-6-206, order restitution that is proportional to the economic interests the State may have under Section 65A-14-202.

KEY: registration, notification, bioprospecting
Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Law : 65A-14-101

Public Safety, Driver License
R708-41-3
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34724
FILED: 04/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is in response to H.B. 86, Veteran's Identification of Driver License or Identification Card, which passed during the 2011 General Session. (DAR NOTE: H.B. 86 will be effective as of 07/01/2011.)

SUMMARY OF THE RULE OR CHANGE: A new definition for "Veteran Indicator" has been added including what documents will be acceptable for proof of an applicant's honorable discharge from the U.S. military.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-104 and Section 53-3-205 and Section 53-3-214 and Section 53-3-410 and Section 53-3-804

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be computer programming costs for the driver license division database and computer programming costs from the card manufacturer to add the "Veteran indicator" to specific license certificates and identification cards. A fiscal note was attached to this legislation to cover these costs.
♦ LOCAL GOVERNMENTS: There is no fiscal impact to local government because local government does not issue Utah driving certificates.
♦ SMALL BUSINESSES: There is no fiscal impact to small businesses because small businesses do not issue Utah driving certificates.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Applicant's for Utah driver license or identification card who have been honorably discharged from the United States Military may chose to have a "Veteran Indicator" shown on their driving certificate or identification card.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this indicator will be added during the driver license or identification card application process, it is included in the statutory licensing or identification card fees. Therefore, there are no additional costs to the applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is not a fiscal impact to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at jlaws@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.
R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.
R708-41-3. Definitions.

(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number as a result of the applicant's legal/lawful presence status, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE)which may provide evidence of both legal/lawful presence; or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English or a foreign passport including a certified translation if the passport is not in English:

(i) Church records;
(ii) Court records;
(iii) Driver License;
(iv) Employee ID;
(v) Insurance ID card;
(vi) Matricular Consular Card (issued in Utah);
(vii) Mexican Voter Registration card;
(viii) School records;
(ix) Utah DPC;
(x) Other evidence considered acceptable by the division director or designee.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

(a) ITIN card issued by the Internal Revenue Service (IRS); or

(b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:

(i) United States citizen;
(ii) National of the United States of America; or
(iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) Pending or approved application for asylum in the United States;

(iii) Admission into the United States as a refugee;

(iv) Pending or approved application for temporary protected status in the United States;

(v) Approved deferred action status; or

(vi) Pending application for adjustment of status to legal permanent resident or conditional resident.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

(A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;

(B) Pending or approved application for asylum in the United States;

(C) Admission into the United States as a refugee;

(D) Pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status; or

(F) Pending application for adjustment of status to legal permanent resident or conditional resident.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and may be verified through the Social Security On-Line Verification system (SSOLV) during every application process and includes:

(a) Social Security card issued by the U.S. government that has been signed or,

(b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:

(i) W-2 form;

(ii) SSA-1099 form;

(iii) Non SSA-1099 form;

(iv) Pay stub showing the applicant's name and SSN; or

(v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number as a result of their legal/lawful presence status.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9)and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon

application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

(a) Bank statement (dated within 60 days);

(b) Court documents;

(c) Current mortgage or rental contract;

(d) Major credit card bill (dated within 60 days);

(e) Property tax notice (statement or receipt dated within one year);

(f) School transcript (dated within 90 days);

(g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;

(h) Valid Utah vehicle registration or title;

(i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

(18) "Veteran indicator" means the word VETERAN will be added to specific driver license certificates and identification certificates during the application process at the applicant's request and upon the applicant providing proof of an honorable discharge from the United States military in the form of a DD214 or other documents, if approved by the division director or designee.

KEY: acceptable documents, identification card, license certificate, limited-term license certificate
Date of Enactment or Last Substantive Amendment: March 24, 2010
Notice of Continuation: March 25, 2010
Authorizing, and Implemented or Interpreted Law: 53-3-104; 53-3-205; 53-3-214; 53-3-410; 53-3-804

Public Service Commission, Administration
R746-343-15
Surcharge

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34760
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The statute that provides for a surcharge to fund the provision of telecommunications devices to hearing and speech impaired persons was amended by S.B. 209 (2011 General Session). The proposed rule change conforms the rule to the new law and establishes a surcharge rate that is consistent with recovering annual program costs. Prior to S.B. 209, the surcharge applied to "residential and business lines." The statute now applies the surcharge to "residential, business, and mobile telephone numbers," a much larger customer base. The Division of Public Utilities has determined the monthly surcharge rate should be reduced from $0.10 to $0.06. The new surcharge rate will provide sufficient funds to operate the program. (DAR NOTE: S.B. 209 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: A surcharge of $0.06 will be imposed on each telephone number of each residential and business customer in the state. The surcharge will be collected by each telecommunications corporation providing public telecommunications service to a customer. The pre-existing $0.10 surcharge placed on each access line will be discontinued.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-10

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be a $0.06 per month increase per telephone number of each residential and business customer of mobile telecommunications services. There will be a surcharge decrease from $0.10 to $0.06 for residential and business customer numbers associated with land lines.
♦ LOCAL GOVERNMENTS: There will be a $.06 per month increase per telephone number of each residential and business customer of mobile telecommunications services. There will be a surcharge decrease from $.10 to $.06 for residential and business customer numbers associated with land lines.
♦ SMALL BUSINESSES: There will be a $0.06 per month increase per telephone number of each residential and business customer of mobile telecommunications services. There will be a surcharge decrease from $0.10 to $0.06 for residential and business customer numbers associated with land lines.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be a $0.06 per month increase per telephone number of each residential and business customer of mobile telecommunications services. There will be a surcharge decrease from $0.10 to $0.06 for residential and business customer numbers associated with land lines.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be $0.06 increase per telephone number of each residential and business customer of mobile telecommunications services. There will be a surcharge decrease from $0.10 to $0.06 for residential and business customer numbers associated with land lines.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Hearing and Speech Impaired Fund balance has been gradually declining since 2006 because annual program costs have averaged about $1,700,000, while surcharge collections have averaged about $1,200,000. Prior to the new law, the

surcharge applied to about 940,000 access lines. Applying the surcharge to "numbers" instead of "lines" makes the surcharge applicable to mobile telecommunications services, increasing the surcharge customer base to about 3,030,000. The new surcharge will recover program costs and, over time, will provide sufficient funds to generate a one-year budget surplus. The surcharge on business land lines will decrease and the reduced surcharge will now apply to business and residential wireless numbers.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.
R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.
R746-343-15. Surcharge.

A. The surcharge will be [~~placed on access lines as determined by the count of main stations or its equivalent~~]imposed on each telephone number of each residential and business customer in this state.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is [~~$.10~~]$.06 per month for each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).

C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each [~~local exchange company~~]telecommunications corporation providing [~~basic~~]public telecommunications service [~~in Utah~~]to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a [~~local exchange company~~]telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the [~~local exchange company~~]telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

KEY: public assistance, physically handicapped, rates, telecommunications
Date of Enactment or Last Substantive Amendment: [~~March 3, 2009~~]2011
Notice of Continuation: December 13, 2007
Authorizing, and Implemented or Interpreted Law: 54-8b-10

Regents (Board of), Administration
R765-604
New Century Scholarship

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34734
FILED: 04/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 132 passed by the 2010 Utah Legislature requires amendments to this rule. Increased demand coupled with limited funding requires flexibility in making awards to eligible applicants. (DAR NOTE: S.B. 132 was effective as of 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Several new definitions have been added. Clarifications to the renewal process, academic progress, and appeal process are also included.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-8-105

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes will not cost the state more but are needed to assure expenditures are within annual budget allocations.
♦ LOCAL GOVERNMENTS: There is no effect to local governments from even the existence of this rule, let alone these amendments. Therefore, there is no cost nor savings to local governments.
♦ SMALL BUSINESSES: There is no effect to small businesses from even the existence of this rule, let alone these amendments. Therefore, there is no cost nor savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These amendments have the possible effect of changing the annual amount a scholarship recipient may receive due to

legislative budget allocations for this scholarship. Since funding is uncertain a scholarship recipient may receive more or less during a second year of awards which may require a recipient to make corresponding adjustments in the amount of other funds to pay for tuition.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule or these amendments. The proposed changes to this rule do not have associated costs for any individual to comply with. In fact, compliance with this rule places no burden of cost on any individual or government entity. This rule outlines the requirements to apply for, receive, and maintain a scholarship for qualifying individuals to attend a public or private institution of higher education in the State of Utah. Therefore there are no costs of compliance for any affect persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The New Century Scholarship will assist Utah students pursuing a baccalaureate degree which will provide a better educated workforce for local employers.

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 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2011

AUTHORIZED BY: William Sederburg, Commissioner

R765. Regents (Board of), Administration.
R765-604. New Century Scholarship.
R765-604-1. Purpose.

To provide policy and procedures for the administration of the New Century Scholarship which was established to encourage [~~and reward high school~~]students [~~who complete the requirements for~~]to accelerate their education by earning an [~~A~~]associate's degree [~~while still~~]in high school[~~, or who complete a rigorous math and science curriculum approved by the State Board of Regents~~] from an institution within the Utah System of Higher Education.

R765-604-3. Definitions.

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents, or a home-school student.

3.2 "Associate's Degree"[~~:~~] means [~~A~~]an Associate of Arts, Associate of Science, or Associate of Applied Science degree received from, or verified by, a regionally accredited institution within the Utah System of Higher Education. If the institution does not offer the above listed degrees, equivalent academic requirements will suffice under subsection 3.4.2. of this policy.

3.[~~2~~]3. "Awards"[~~:~~] means New Century Scholarship funds.

3.[~~3~~]4. "Board"[~~:~~] means [~~T~~]the Utah State Board of Regents.

3.[~~4~~]5. "Completes the requirements for an [~~A~~]associate's degree"[~~: M~~] means that an applicant[~~ student~~] completes either of the following:

3.[~~4~~]5.1. all the required courses for an [~~A~~]associate's degree from an institution within the Utah System of Higher Education that offers [~~A~~]associate's degrees; and applies for the [~~A~~]associate's degree from the institution; or

3.[~~4~~]5.2. all the required courses for an equivalency to the [~~A~~]associate's degree from a higher education institution within the Utah System of Higher Education that offers [~~B~~]baccalaureate degrees but does not offer [~~A~~]associate's degrees.

3.[~~5~~]6. "Full-time"[~~:~~] means [~~A~~]a minimum of twelve credit hours.

3.[~~6~~]7. "High school"[~~:~~] means [~~A~~]a public high school established by the Utah State Board of Education or a private high school within the boundaries of the State of Utah. If a private high school, it [~~must~~]shall be accredited by a regional accrediting body approved by the Board.

3.[~~7~~]8. "High school graduation date"[~~:~~] means [~~T~~]the day on which the recipient's class graduates from high school. For home-schooled students refer to subsection 4.2.1 of this policy.

3.[~~8~~]9. "Home-schooled"[~~:~~] [~~R~~]refers to a student who has not graduated from a Utah high school and received a high school grade point average.

3.[~~9~~]10. "Math and science curriculum"[~~:~~] means [~~T~~]the rigorous math and science curriculum developed and approved by the Board which, if completed, qualifies a high school student for an award. Curriculum requirements can be found at the Web site of the Utah System of Higher Education.

3.11. "New Century Scholarship" means a renewable scholarship to be awarded to applicants who complete the eligibility requirements of Section 4.4 of this policy.

3.1[~~0~~]2. "Reasonable progress"[~~:~~] means [~~A recipient must complete~~]enrolling and completing at least twelve credit hours during [~~F~~]fall and [~~S~~]spring semesters and earning a 3.0 grade point average or higher each semester[~~or apply for and receive an approved Deferral or Leave of Absence from the Board~~]. If applicable, [~~students~~]applicants attending summer must enroll full-time according to their institution and or program policy regarding full-time status.

3.1[~~1~~]3. "Recipient"[~~:~~] means [~~A student~~]an applicant who receives an award under the requirements set forth in this policy.

3.1[~~2~~]4. [~~"Scholarship": The New Century Scholarship.~~] "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester grade point average and a detailed schedule providing proof of full-time enrollment for the semester which the recipient is seeking award payment.

3.15. "Scholarship Review Committee" means the committee to review New Century Scholarship applications and make final decisions regarding awards.

3.16. "Two years of full-time equivalent enrollment" means the equivalent of four semesters of full-time enrollment (minimum of twelve credit hours per semester).

3.17. "The Utah System of Higher Education" means the institutions that comprise Utah's public higher education institutions including the University of Utah, Utah State University, Weber State University, Southern Utah University, Utah Valley University, Dixie State College of Utah, Salt Lake Community College, and Snow College.

R765-604-4. Recipient Requirements.

4.1. General Academic Requirements: Unless an exception applies, to qualify as a recipient a student shall:

4.1.1. complete the requirements for an [~~A~~]associate's degree or the math and science curriculum at a regionally accredited institution within the Utah System of Higher Education

4.1.1.1. with at least a 3.0 grade point average

4.1.1.2. by [~~student's~~]applicant's high school graduation date; and

4.1.2. complete the high school graduation requirements of a Utah high school with at least a 3.5 cumulative grade point average.

4.2. Utah Home-schooled [~~Students~~]Applicants: For Utah home-schooled [~~students~~]applicants the following [~~exceptions and~~] requirement[~~s~~] appl[~~y~~]ies:

4.2.1. [~~High School Graduation Date for Home-schooled Students:~~

~~4.2.1.1. Completes High School in 2011 and After: ~~]If a home-schooled [~~student~~]applicant would have completed high school in 2011 or after, the high school graduation date (under subsection 4.1.1.2.) is June 15 of the year the [~~student~~]applicant would have completed high school[~~:~~].

[~~4.2.1.2. Completes High School in 2010 and Before: If a home-schooled student would have completed high school in 2010 or before, the high school graduation date (under subsection 4.1.1.2) is September 1 of the year the student would have completed high school.~~

] 4.2.2. ACT Composite Score Requirement: A composite ACT score of 26 or higher is required in place of the high school grade point average requirement (under subsection 4.1.2).

[~~4.3. Exception for High School Graduating Class of 2010 and Before: For students whose high school graduation date is in 2010 or before the following exceptions apply:~~

~~4.3.1. Change in Deadline: The deadline to complete the requirements for an Associate's degree or the math and science curriculum (under subsection 4.1.1.2.) is changed to September 1 of the year of the student's graduation date; and the documentation submission deadline is October 15.~~

~~4.3.2. No High School GPA Requirement: Subsection 4.1.2. shall not apply.~~

] 4.[~~4~~]3. 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 [~~D~~]deferral or [~~L~~]leave of [~~A~~]absence from the Board under subsection 8.7 of this policy.

4.[~~5~~]4. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.[~~6~~]5. No Criminal Record Requirement: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.[~~7~~]6. Regents' Scholarship: A recipient shall not receive both an award and the Regents' Scholarship established in Utah Code Section 53B-8-108.

R765-604-5. Application Procedures.

5.1. Application Contact: Qualifying students [~~may~~]shall apply for the award through the Board.

5.2. General procedure: An application for an award shall contain the following:

5.2.1. Application Form: the official application will become available on the New Century Web site each November prior to the February 1 deadline; and

5.2.2. College Transcript: an official college transcript showing college courses, Advanced Placement and transfer work an [~~student~~]applicant has completed to meet the requirements for the [~~A~~]associate's degree and verification of the date the award was earned; and

5.2.3. High School Transcript: an official high school transcript with high school graduation dated posted (if applicable).

5.2.4. ACT Score: a copy of the student's verified ACT score (if applicable).

5.3. Registrar Verification: If an [~~student~~]applicant is enrolled at an institution which does not offer an [~~A~~]associate's degree or an institution that will not award the [~~A~~]associate's degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements under 4.1.1.

5.4. Application Deadline: Applicants shall meet the following deadlines to qualify for an award:

5.4.1. Application Submission: [~~Students~~]Applicants must submit a scholarship application to the [~~s~~]Scholarship [~~r~~]Review [~~e~~]Committee no later than February 1 of the year of their high school graduation date or the year they would have graduated from high school.

5.4.2. Support Documentation Submission: All necessary support documentation shall be submitted on or before [~~August~~]September 1 following the applicant's high school graduation date. In some cases exceptions may be made as Advanced Placement and transfer work verification may be delayed at an institutional level and no fault of the applicant. Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all coursework and GPA requirements or if any information, including the attestation of criminal record and citizenship status, proves to be falsified, awards may be denied.

5.4.3. Priority Deadline: A priority deadline may be established each year. [~~Students~~]Applicants who meet the priority deadline may be given first priority of consideration for awards.

5.5. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, will not be considered, and may result in failure to meet a deadline.

R765-604-6. Awards.

6.1. Value of the Award: [~~Unless an exception applies, the maximum total value of the award is $5000. The award amount up to $5000 is allocated over a time period described in subsection 7.1. Recipients are not entitled to the maximum award. The award amount is subject to Legislative funding and may be reduced.~~]The award is up to the amount provided by the law and determined each Spring by the Board based on legislative funding and number of applicants. The total value may change in accordance with subsection 6.[~~3~~]2. The award shall be disbursed semester-by-semester over the shortest of the following time periods:

6.1.1. Four semesters of full-time enrollment (minimum of twelve credit hours per semester).

6.1.2. Sixty credit hours.

6.1.3. Until the student meets the requirements for a baccalaureate degree.

[~~6.2. Exception for High School Graduating Class of 2010 and Before: For a student who graduates from high school in 2010, or before, the maximum total value of the award is as follows:~~

~~6.2.1. Public Institutions: If used at an institution within the Utah System of Higher Education, the amount of the award, depending on available funding and may be reduced, will be up to 75% of the total cost of tuition based on the number of hours the student is enrolled; or~~

~~6.2.2. Private Nonprofit Institutions: If used at an eligible private nonprofit institution the award, depending on available funding and may be reduced, will be up to 75% of the tuition costs at the institution, not to exceed 75% of the average tuition costs at the baccalaureate degree granting institutions within the Utah System of Higher Education.~~

~~6.3. Changes in Award Amount~~

~~6.3.1 The Board May Increase Award: The Board may increase the total value of the award in subsection 6.1. by an amount not to exceed the average percentage tuition increase approved by the Board for institutions in the Utah System of Higher Education.~~

] 6.[~~3.~~]2. The Board May Decrease Award: If the appropriation from the Utah Legislature for the scholarship is insufficient to cover the costs associated with the scholarship, the Board may reduce or limit the award[~~ under both subsections 6.1. and 6.2~~].

6.[~~4~~]3. Eligible Institutions: An award may be used at either

6.[~~4~~]3.1. Public Institution: a four-year institution within the Utah System of Higher Education that offers baccalaureate programs; or

6.[~~4~~]3.2. Private Nonprofit Institution: a private not-for-profit higher education four-year institution in the state of Utah accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

6.[~~5~~]4. Enrollment at Multiple Institutions: The award may be used at more than one of the eligible institutions within the same semester for the academic year 2010-11. [~~However, s~~]Starting in 2011 when the award goes to a flat rate the award may only be used at the institution from which the student[~~s~~] is earning a baccalaureate degree.

6.[~~6~~]5. Student Transfer: The award may be transferred to a different eligible institution upon request of the recipient.

6.[~~7~~]6. Financial Aid and other Scholarships: With the exception of the Regents' Scholarship (as detailed in subsection 4. [~~7~~]6 of this policy) tuition waivers, financial aid, or other scholarships will not affect a recipient's total award amount.

R765-604-7. Disbursement of Award.

7.1. Disbursement Schedule of Award: The award shall be disbursed semester-by-semester over the shortest of the following time periods:

7.1.1. Four semesters of full-time enrollment;

7.1.2. sixty credit hours; or

7.1.3. Until the recipient meets the requirements for a baccalaureate degree.

7.2. [~~Tuition~~]Enrollment Documentation: The recipient shall submit to the [~~Board~~]Scholarship Review Committee a copy of a class schedule verifying that the recipient is enrolled full-time (twelve or more credit hours) at an eligible institution. Documentation must include the student's name, the semester the recipient will attend, institution that they are attending and the number of credits for which the recipient is[~~number of hours~~] enrolled.[~~ The Board will calculate the amount of the award based on the published tuition costs at the enrolled institution(s) and the availability of program funding.~~]

7.3. Award Payable to Institution: The award will be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds should be used for higher education expenses including tuition, fees, books, supplies, and equipment required for courses of instruction.

7.4. Dropped Hours [~~a~~]After Award: If a [~~student~~]recipient drops credit hours after having received the award which results in enrollment below full-time the scholarship will be revoked (see 8.1) unless the student needs fewer than twelve hours for completion of a degree.[~~ Students will be required to pay back the entire payment received for that semester.~~]

[~~7.5. Exception for High School Graduating Class of 2010 and Before: For a recipient whose high school graduation date is in 2010 or before, the following additional provisions apply:~~

~~7.5.1. 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.~~

~~7.5.2. Added Hours after Award: The award will be increased up to 75% of the tuition costs of any hours added in the semester after the initial award has been made, depending on available funding. Recipient shall submit to the Board a copy of the tuition invoice or class schedule verifying the added hours before a supplemental award is made.~~

~~7.5.3. Dropped Hours After Award: If a student drops 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 Board. If a recipient fails to complete a minimum of twelve semester hours, the~~

~~scholarship will be revoked (see 8.1) unless the student needs fewer than twelve hours for completion of a degree. Students will be required to pay back the entire payment received for that semester.~~
]

R765-604-8. Continuing Eligibility.

8.1. Reasonable Progress [~~t~~]Toward Degree Completion: [~~In order to renew and award, the recipient must maintain reasonable progress toward degree completion by achieving a 3.0 GPA each semester and enrolling full-time (12 credit hours) each semester. If the recipient fails to maintain a 3.0 GPA or fails to enroll full-time, the award may be revoked.~~]The Board may cancel a recipient's scholarship if the student fails to :

8.1.1. Maintain 3.0 GPA: to maintain a 3.0 grade point average or higher for each semester for which the student has received awards; or

8.1.2. Reasonable Progress: to make reasonable progress (twelve credit hours) toward the completion of a baccalaureate degree and submit the documentation by the deadline as described in subsection 8.2. A recipient must apply and receive an approved deferral or leave of absence under subsection 8.7 if he or she will not enroll full-time in continuous fall and spring semesters.

8.2. Duty of Student to Report Reasonable Progress: Each semester, the recipient must submit to [~~SBR~~]the Board a copy of his or her grades [~~to verify that he or she is meeting the required~~]for verification of grade point average and [~~is completing~~]completion of the required [~~a~~]minimum of twelve semester credit hours. [~~Students~~]Recipients will not be paid for the coming semester until the requested documentation has been received. If the recipient fails to maintain a 3.0 grade point average or higher for two consecutive semesters or fails to enroll and complete twelve credit hours, the scholarship will be revoked. These documents must be submitted by the following dates:

8.2.1. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

8.2.2. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.3. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

8.2.4. 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.

8.2.5. Proof of enrollment if you are attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

8.2.6. Proof of enrollment if you are attending Brigham Young University during Summer Term and proof of completion of the previous semester or term must be submitted by July 30.

8.3. Probation: If a recipient earns less than a 3.0 [~~GPA~~]grade point average in any single semester, the recipient must earn a 3.0 [~~GPA~~]grade point average or better the following semester to maintain eligibility for the [~~award~~]scholarship. If the recipient again at anytime earns less than a 3.0 grade point average the scholarship will be revoked.

8.4. Final Semester: A recipient will not be required to enroll full-time if the recipient can complete the degree program with fewer credits.

8.5. No Awards [~~a~~]After Five Years: The Board will not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

8.6. No Guarantee of Degree Completion: An award does not guarantee that the recipient will complete his or her baccalaureate program within the recipient's scholarship eligibility period.

8.7. Deferral or Leave of Absence.

8.7.1. A recipient [~~may~~]shall apply to the Board for a deferral of award or a leave of absence if they do not continuously enroll full-time.

8.7.2. A deferral or leave of absence will not extend the time limits of the scholarship under subsection 8.5.

8.7.3. Deferrals or leaves of absence may be granted, at the discretion of the Board, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

R765-604-9. Appeals.

9.1. 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[~~;~~]. Awards are based on available [~~Legislative~~]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[~~, whether the decision is a scholarship award or denial of scholarship~~].

9.2. Appeals: Applicants and recipients have the right to[~~may~~] appeal an adverse decision.[~~denial of the scholarship by submitting a written appeal to the Board~~]

9.2.1. Appeals shall be postmarked within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.[~~receipt of the decision letter.~~]

9.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

9.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

9.2.4. Appeals are not accepted for late document submission.

9.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

9.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the New Century Scholarship address.

9.2.7. 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 New Century Scholarship Appeal Form.~~]

KEY: higher education, secondary education, scholarships
Date of Enactment or Last Substantive Amendment: [~~August 9, 2010~~]2011
Notice of Continuation: December 21, 2009
Authorizing, and Implemented or Interpreted Law: 53B-8-105

Regents (Board of), Administration
R765-612
Lender Participation

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 34721
FILED: 04/26/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule outlines lender requirements to participate as an originator of federal student loans in the Utah Higher Education Assistance Authority loan program. Federal law (H.R. 4872) passed by Congress and signed by the President in March 2010 ended the Federal Family Education Loan Program in which private lenders participated. Since lenders, including Utah banks and credit unions, no longer make federal student loans, there is no reason to maintain this rule.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 53B, Chapter 12

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no cost nor savings to any state budget by repealing this rule since this rule only applied to commercial lenders who formerly participated in the federal student loan program.
♦ LOCAL GOVERNMENTS: There is no cost nor savings to any local government by repealing this rule since this rule only applied to commercial lenders who formerly participated in the federal student loan program.
♦ SMALL BUSINESSES: There is no cost nor savings to any small businesses by repealing this rule since this rule only applied to commercial lenders who formerly participated in the federal student loan program.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no cost nor savings to any individual by repealing this rule since this rule only applied to commercial lenders who formerly participated in the federal student loan program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for anyone as there are no affected persons. Lenders who provided funds for federal student loans can no longer offer those loans due to changes in federal law. Students were directly affected by this law but the repeal of this rule does not require their compliance nor assess any cost to them or the lenders.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: With the demise of privately-funded federal student loans, there is no purpose in maintaining this rule.

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 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2011

AUTHORIZED BY: William Sederburg, Commissioner

R765. Regents (Board of), Administration.
[~~R765-612. Lender Participation.~~
~~R765-612-1. Purpose.~~
~~To establish the lender eligibility requirements for participation as an originating lender in the UHEAA loan program.~~

~~R765-612-2. References.~~
~~2.1 Utah Code Annotated Title 53B, Chapter 12.~~
~~2.2 Higher Education Act of 1965, as amended.~~

~~R765-612-3. Definitions.~~
~~3.1 Originating Lender. A lending institution which originates Federal Stafford, PLUS, SLS or Consolidation Loans.~~
~~3.2 Located in Utah. With respect to this rule, a lender is located in Utah if the lender has an office in Utah where the lender's full range of products and services is available to the lender's customers for routine business transactions. An office established for the sole purpose of collecting student loan applications is not sufficient to qualify a lender as being located in Utah.~~

~~R765-612-4. Policy.~~
~~4.1 To participate as an originating lender in the UHEAA loan program, a lender must:~~
~~4.1.1 be located in Utah;~~
~~4.1.2 be an eligible lender as defined by the Higher Education Act of 1965, as amended;~~
~~4.1.3 obtain a six-digit lender identification number issued by the U.S. Department of Education; and~~
~~4.1.4 execute an "Agreement to Guarantee Loans" with UHEAA.~~

~~4.2 A lender which meets the requirements of 4.1 may make loans guaranteed by UHEAA to any eligible borrower.~~
~~4.3 A lender which participates in the UHEAA loan program is considered pre-approved.~~
~~4.4 By disbursing the loan, the lender acknowledges its approval of the loan.~~
~~4.5 A guarantee issued by UHEAA may be cancelled by the lender, if the lender does not grant approval of the loan.~~
~~4.6 If the lender violates or fails to comply with the provisions of this policy or the Higher Education Act of 1965, as amended, the lender will be liable for any penalties, claims, actions and expenses relating to the violation. In addition, the lender may be subject to limitation, suspension or termination under the Higher Education Act of 1965, as amended.~~

~~KEY: higher education, student loans~~
~~Date of Enactment or Last Substantive Amendment: October 19, 2004~~
~~Notice of Continuation: October 20, 2006~~
~~Authorizing, and Implemented or Interpreted Law: 53B-12-101(6)~~]

Tax Commission, Administration
R861-1A-29
Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Section 63G-4-302

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34753
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: While Section 59-1-205 provides that in the case of a tie vote of the commissioners, the taxpayer shall prevail, that section does not define the term "taxpayer."

SUMMARY OF THE RULE OR CHANGE: The proposed amendment provides that for purposes of the requirement that in a tie vote of the commission, the position of the taxpayer is considered to have prevailed, the term "taxpayer" includes a person that has received a license from the commission and an applicant for a license issued by the commission.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-302

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Unknown but immaterial. The proposed amendment will, in the rare case of a tie commission vote, allow an applicant to purchase a license from the commission, or overturn a penalty imposed against a licensee.
♦ LOCAL GOVERNMENTS: Unknown but immaterial. The proposed amendment will, in the rare case of a tie commission vote, allow an applicant to purchase a license from the commission, or overturn a penalty imposed against a licensee.
♦ SMALL BUSINESSES: Unknown but immaterial. The proposed amendment will, in the rare case of a tie commission vote, allow an applicant to purchase a license from the commission, or overturn a penalty imposed against a licensee.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Unknown but immaterial. The proposed amendment will, in the rare case of a tie commission vote, allow an applicant to purchase a license from the commission, or overturn a penalty imposed against a licensee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment will clarify that in the case of a tie commission vote, an applicant for a license issued by the commission will receive the license, or a fine imposed against a person licensed by the commission will be overturned.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY, UT 84134-0002
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. [~~Section~~]Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

[~~(1)~~](2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the [~~Tax Commission~~]commission.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

[~~(2)~~](3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
Date of Enactment or Last Substantive Amendment: [~~February 23,~~]2011
Notice of Continuation: March 20, 2007
Authorizing, and Implemented or Interpreted Law: 59-1-205;63G-4-302

Tax Commission, Administration
R861-1A-45
Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34754
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 188 (2011 General Session) requires the commission to promulgate a rule indicating the procedures the commission will follow in a commission meeting that is not open to the public. (DAR NOTE: S.B. 188 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: The proposed rule indicates the procedures the commission will follow when in a meeting that is not open to the public. These procedures include maintaining confidential minutes of the meeting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-405

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Any fiscal impact was considered in S.B. 188 (2011).
♦ LOCAL GOVERNMENTS: None--Any fiscal impact was considered in S.B. 188 (2011).
♦ SMALL BUSINESSES: None--Any fiscal impact was considered in S.B. 188 (2011).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact was considered in S.B. 188 (2011).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed rule describes procedures the commission will follow when in a meeting that is not open to the public.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None anticipated.

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

TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY, UT 84134-0002
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

(a) follow the procedures set forth in commission rules:

(i) R861-1A-9, Tax Commission as Board of Equalization;

(ii) R861-1A-11, Appeal of Corrective Action;

(iii) R861-1A-20, Time of Appeal;

(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;

(v) R861-1A-23, Designation of Adjudicative Proceedings;

(vi) R861-1A-24, Formal Adjudicative Proceedings;

(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;

(viii) R861-1A-27, Discovery;

(ix) R861-1A-28, Evidence in Adjudicative Proceedings;

(x) R861-1A-29, Decision, Orders, and Reconsideration;

(xi) R861-1A-30, Ex Parte Communications;

(xii) R861-1A-31, Declaratory Orders;

(xiii) R861-1A-32, Mediation Process;

(xiv) R861-1A-33, Settlement Agreements;

(xv) R861-1A-34, Private Letter Rulings;

(xvi) R861-1A-38, Class Actions;

(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and

(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

(a) the date, time, and place of the meeting;

(b) the names of each person present at the meeting;

(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;

(d) a record, by commissioner, of each vote taken by the commission;

(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and

(f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

(a) properly labeled or identified with the date, time, and place of the meeting; and

(b) a complete and unedited record of the meeting.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
Date of Enactment or Last Substantive Amendment: [~~February 23,~~]2011
Notice of Continuation: March 20, 2007
Authorizing, and Implemented or Interpreted Law: 59-1-405

Tax Commission, Auditing
R865-6F-40
Foreign Operating Company Subtraction from Unadjusted Income Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-106

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34755
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed section is necessary to implement S.B. 23 (2010 General Session). (DAR NOTE: S.B. 23 (2010) is effective as of 01/01/2011.)

SUMMARY OF THE RULE OR CHANGE: The proposed section provides that the activities of a partnership interest are taken into account in determining whether a corporation qualifies as a foreign operating company and in the

calculation of any adjustment for which the corporate partner that is a foreign operating company is eligible; requires a foreign operating company that is a member of a unitary group to eliminate any transaction between that foreign operating company and a partnership held by another member of the same unitary group prior to determining the amount of the foreign operating company subtraction from unadjusted income.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-7-101 and Section 59-7-106

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Any fiscal impact would have been taken into account in S.B. 23 (2010).
♦ LOCAL GOVERNMENTS: None--Any fiscal impact would have been taken into account in S.B. 23 (2010).
♦ SMALL BUSINESSES: None--Any fiscal impact would have been taken into account in S.B. 23 (2010).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact would have been taken into account in S.B. 23 (2010).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed section describes instances in which a foreign operating corporation would be required to decrease its subtraction from unadjusted income pursuant to S.B. 23 (2010).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposal creates no additional impact beyond any considered raising SB 23 (2010).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-40. Foreign Operating Company Subtraction from Unadjusted Income Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-106.

(1) The activities of a partnership interest are taken into account in determining whether a corporation qualifies as a foreign operating company and calculating any adjustment for which the corporate partner that is a foreign operating company is eligible.

(a) Partnership activities are attributed to the corporation to the extent of the corporation's ownership interest in the partnership.

(b) The character of each class or type of partnership income passes through to the corporate partner. Accordingly, a corporate partner that is a foreign operating company may not make a subtraction from unadjusted income as a foreign operating company for partnership income generated from intangible property and assets held for investment and not from a regular business trading activity.

(2) Prior to determining the foreign operating company subtraction, a foreign operating company that is a member of a unitary group shall eliminate a transaction between the foreign operating company and a partnership held directly or indirectly by a member of the same unitary group to the extent of the interest the foreign operating company holds in the partnership.

KEY: taxation, franchises, historic preservation, trucking industries
Date of Enactment or Last Substantive Amendment: [~~December 15, 2010~~]2011
Notice of Continuation: March 8, 2007
Authorizing, and Implemented or Interpreted Law: 59-7-101; 59-7-104 through 59-7-106

Tax Commission, Auditing
R865-19S-92
Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34756
FILED: 05/02/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-211 requires the commission to promulgate rules for the sourcing of a transaction that involves computer software if there is no transfer of a copy of

the software to the purchaser and the purchaser uses the software at more than one location.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment indicates how a transaction involving computer software is sourced if the transaction does not include a copy of the software to the purchaser and the purchaser uses the software at more than one location.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103 and Section 59-12-211

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Any fiscal impact was considered in H.B. 35 (2011 General Session). (DAR NOTE: H.B. 35 will be effective as of 07/01/2011.)
♦ LOCAL GOVERNMENTS: None--Any fiscal impact was considered in H.B. 35 (2011).
♦ SMALL BUSINESSES: None--Any fiscal impact was considered in H.B. 35 (2011).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact was considered in H.B. 35 (2011).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment provides a manner for a seller to source these software related transactions if the seller is required to collect and remit sales tax, or for the purchaser to source these software related transactions if the seller is not required to collect and remit sales tax.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Adoption to this rule creates no additional impact beyond that considered when H.B. 35 was passed. (DAR NOTE: H.B. 35 will be effective 07/01/2011.)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. [~~Section~~]Sections 59-12-103 and 59-12-211.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

(4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if:

(i) a purchaser uses computer software;

(ii) there is not a transfer of a copy of the computer software to the purchaser; and

(iii) the purchaser uses the computer software at more than one location.

(b) The location of a transaction described in Subsection (4)(a) is:

(i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or

(ii) if the seller is required to collect and remit tax to the commission for the purchase , and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in accordance with Subsections 59-12-211(4) and (5); or

(iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined:

(A) by applying a reasonable and consistent method of allocation; or

(B) in accordance with Subsections 59-12-211(4) and (5).

KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment: [~~January 27,~~]2011
Notice of Continuation: March 13, 2007
Authorizing, and Implemented or Interpreted Law: 59-12-103; 59-12-211

Tax Commission, Auditing
R865-19S-103
Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34757
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment replaces an unnecessary quarterly filing with an annual filing.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment reduces the filing frequency from a quarterly to an annual filing for the report required from persons that deliver taxable energy to users for whom the person does not supply taxable energy.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 10-1-303 and Section 10-1-306 and Section 10-1-307

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--The proposed amendment reduces the frequency of filing for an information return.
♦ LOCAL GOVERNMENTS: None--The proposed amendment reduces the frequency of filing for an information return.
♦ SMALL BUSINESSES: None--The proposed amendment reduces the frequency of filing for an information return.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The proposed amendment reduces the frequency of filing for an information return.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment reduces the filing frequency of an information return from a quarterly filing to an annual filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: May reduce fiscal impact by reducing tax returns from form to one in each year.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

[~~A.~~](1) Definitions.

[~~1.~~](a) "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

[~~2.~~](b) "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

[~~B.~~](2) Except as provided in [~~C.~~]Subsection (3), the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

[~~C.~~](3) If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

[~~D.~~](4) The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

[~~E.~~](5) An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

[~~F.~~](6) A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

[~~G.~~](7) A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the [~~Tax Commission~~]commission:

[~~1.~~](a) on forms provided by the [~~Tax Commission~~]commission, and

[~~2.~~](b) at the time and in the manner sales and use tax is remitted to the [~~Tax Commission~~]commission.

[~~H.~~](8) A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the [~~Tax Commission~~]commission for each user for whom the person does not supply taxable energy, but provides only

the transportation component of the taxable energy's delivered value:

[~~1.~~](a) the name and address of the user of the taxable energy;

[~~2.~~](b) the volume of taxable energy delivered to the user; and

[~~3.~~](c) the entity from which the taxable energy was purchased.

[~~I.~~](9) The information required under [~~H.~~]Subsection (8) shall be provided to the [~~Tax Commission~~]commission:

[~~1. on or before the last day of the month following each calendar quarter; and~~

~~2.~~](a) for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value; and

(b)(i) except as provided in Subsection (9)(b)(ii), at the time the person delivering the taxable energy files sales and use tax returns with the commission; or

(ii) if the person delivering the taxable energy files an annual information return under Subsection 10-1-307(5), at the time that annual information return is filed with the commission.

KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment: [~~January 27,~~]2011
Notice of Continuation: March 13, 2007
Authorizing, and Implemented or Interpreted Law: 10-1-303; 10-1-306; 10-1-307

Transportation, Program Development
R926-11
Rules for Permitting of Eligible Vehicles for a Clean Fuel Special Group License Plate On or After January 1, 2009

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34765
FILED: 05/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement the changes required by H.B. 24 (2011 General Session) by ending use of unique vehicle type license plate for a vehicle powered by clean fuel and by adding provisions to administer the clean fuel vehicle decal program. (DAR NOTE: H.B. 24 is effective as of 05/10/2011.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment would end use of the unique vehicle type license plate for a vehicle powered by clean fuel and replace it with the clean fuel vehicle decal program which provides procedures for clean fuel vehicle owners to obtain a decal and permit to allow them to access high occupancy vehicle lanes regardless of the number of occupants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-702 and Section 72-6-121

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Funds generated by the clean fuel vehicle decal program will be used to cover the costs incurred in issuing clean fuel vehicle decals, so there are no anticipated cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government unless they have clean fuel vehicles in their fleet and choose to pay the fee and obtain clean fuel vehicle decals and permits.
♦ SMALL BUSINESSES: There are no anticipated cost or savings to small businesses unless they own a clean fuel vehicle and choose to pay the fee and obtain a clean fuel vehicle decal and permit.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated cost or savings to persons other than small businesses, businesses, or local governments unless they own a clean fuel vehicle and choose to obtain a clean fuel vehicle decal and permit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In order to participate in the clean fuel vehicle decal program, affected persons will need to satisfy the requirements of the program including payment of the fee to obtain a decal and permit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses unless they have clean fuel vehicles and choose to participate in the program and obtain clean fuel vehicle decals and permits.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PROGRAM DEVELOPMENT
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 06/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011

AUTHORIZED BY: John Njord, Executive Director

R926. Transportation, Program Development.

R926-11. [~~Rules for Permitting of Eligible Vehicles for a Clean Fuel Special Group License Plate On or After January 1, 2009~~]Clean Fuel Vehicle Decal Program.

R926-11-1. Purpose and Authority.

(1) As authorized in Utah Code Ann. Sections 41-6a-702 and 72-6-121 this rule establishes [~~rules~~]procedures for regulating access to high occupancy vehicle lanes by vehicles with a clean fuel vehicle decal[~~special group license plate~~] regardless of the number of occupants.

(2) Federal law authorizes states to allow the use of high occupancy vehicle (HOV) lanes by inherently low emission vehicles (ILEV) and low emission and energy-efficient vehicles with only a single occupant through September 30, 2009, unless federal authorization is extended. Federal law further requires a state to limit or discontinue the use of these single-occupant vehicles if the presen[~~t~~]ce of the vehicles has degraded the operation of the HOV facility.

R926-11-2. Definitions.

(1) "Hybrid" means a Low Emission and Energy Efficient vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code 166[~~;~~].

(2) "ILEV" means an Inherently Low Emission Vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code 166[~~;~~].

(3) "C decal" means a clean vehicle decal issued by the department.

([~~3~~]4) "C [~~P~~]plate" means a clean fuel special group license plate issued by the Division of Motor Vehicles[~~DMV~~] as had been previously authorized in Utah Code[~~;~~].

([~~4~~]5) "C [~~Plate P~~]permit" means a permit issued by the department to the owner of an eligible ILEV or Hybrid vehicle[~~that enables the permit holder to obtain a C plate from the DMV;~~].

([~~5~~]6) "[~~d~~]Department" means the Utah Department of Transportation[~~;~~].

[~~(6) "DMV means the Division of Motor Vehicles of the Utah Tax Commission;~~

] (7) "HOV" means a highway lane that has been designated for the use of high occupancy vehicles pursuant to Section 41-6a-702.

R926-11-3. Identification of Eligible C [~~Plate~~]Decal Vehicles Prior to [~~January 1, 2009~~]July 1, 2011.

([~~a~~]1) Upon receipt of a list from the Division of Motor Vehicles showing registered vehicles for which a C plate has been issued prior to July 1, 2011, the department will determine which vehicles meet the definition of an ILEV or Hybrid vehicle as provided in this rule.

(2) Vehicle owners with vehicles registered with a C plate issued prior to [~~January 1, 2009~~]July 1, 2011, and for which the vehicle meets the definition for an ILEV or Hybrid as defined in this rule, will receive a C decal and C permit issued by the department at no cost[~~may retain the C plate or transfer the plate to a newly purchased eligible ILEV or hybrid vehicle under the processes defined under this rule~~].

([~~b~~]3) Vehicle owners with vehicles registered with a C plate issued prior to [~~January 1, 2009~~]July 1, 2011, that do not meet the definition of an eligible ILEV or Hybrid vehicle are not [~~longer~~]eligible to receive a C decal or C permit. The department will notify these vehicle owners of ineligibility.[~~retain the C plate and must surrender the plate:~~

~~(i) at the time of their next vehicle registration renewal, and;~~

~~(ii) upon receipt of a vehicle registration renewal received from the DMV containing notification that the vehicle is no longer eligible for a C plate.~~

~~(iii) As provided under Utah Code 41-1a-1211, a new plate will be issued by the DMV for the surrendered C plate at no charge.~~

~~(c) Upon receipt of a list of registered vehicles, provided by the DMV, for which a C plate has been issued prior to January 1, 2009, the department will determine which vehicles meet the definition of an ILEV or Hybrid vehicle as provided in this rule. From that list, the department will advise the DMV which vehicles do not meet the definition of an eligible ILEV or Hybrid vehicle and, therefore, are no longer eligible for a C plate in order for the DMV to provide notification to vehicle owners as provided under subparagraph (b)(ii).~~]

([~~d~~]4) Vehicle owners for whom notification has been provided under subsection[~~paragraph~~] ([~~b~~)(ii]3) may receive a C decal and C[~~Plate P~~]permit [~~from the department~~]at no cost if the vehicle owner:

([~~ii~~]a) [~~the vehicle owner~~]submits an application as provided under R926-11-5([~~e~~]3), and;

([~~iii~~]b) provides sufficient proof to the department that the vehicle meets eligibility requirements for an ILEV or Hybrid vehicle as provided under this rule.

R926-11-4. Permitting of Eligible Vehicles after [~~January 1, 2009~~]June 30, 2011.

([~~a~~]1) Owners of an eligible ILEV and Hybrid vehicle shall qualify for a C [~~plate~~]decal and C permit upon application to the department[~~and receipt of a C Plate Permit from the department~~] under permitting processes and payment of a fee defined under this rule.

[~~(b) The DMV shall issue a C Plate to the holder of a valid C Plate Permit issued by the department to the eligible vehicle being registered for a Clean Fuel Special Group License Plate.~~

~~(c) To transfer a C plate from one eligible vehicle to a new eligible vehicle, the vehicle owner of a vehicle registered with a Valid C plate must obtain a C Plate Permit from the department before the DMV will transfer the C plate to the new eligible vehicle being registered.~~](2) The owner of a vehicle issued a C decal and a C permit is prohibited from placing the C decal on any vehicle other than the vehicle for which the department has issued a C decal and C permit. Posting a C decal on a vehicle other then the vehicle for

which the department has issued a C decal and C permit will render the vehicle owner ineligible to participate in the Clean Fuel Vehicle Program.

(3) The owner of a vehicle issued a C decal must have in the person's immediate possession the C permit issued by the department for that vehicle.

(4) The C decal must be placed in the windshield of the vehicle, centered near the rearview mirror and 4 inches from the top of the windshield. If the vehicle has an AS-1 line, the decal must be mounted below the line. The decal must be mounted directly onto the windshield and cannot be mounted with tape or any other device.

([~~d~~]5) The department shall maintain and publish a listing online of all ILEV and Hybrid vehicle makes and models eligible for a C [~~Plate P~~]decal and C permit.

(6) The department will charge a fee for the issuance of a C decal. The amount of the fee will be posted on the application in the amount established by the department in accordance with Section 63J-1-504.

R926-11-5. Issuance of C [~~Plate~~]Decals and C Permits.

([~~a~~]1) The department may restrict use of the HOV facility by single-occupant [~~C plate~~]vehicle[~~s~~] with a C decal if the operation of the facility is degraded. For the purposes of this rule, an HOV facility may be considered degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed of 45 miles per hour 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both).

([~~b~~]2) Not more frequently than once a year, the department may evaluate the operation of the HOV facility and determine whether the facility will continue to operate at an acceptable level of service. Based on that evaluation and if the department determines that additional single-occupant vehicles with a C [~~plate~~]decal may operate in the HOV lane without compromising operation of the facility, the department shall issue the appropriate number of C [~~Plate Permits~~]decals to eligible applicants as set forth under sub[~~paragraph~~]section ([~~d~~]4).

([e]3) Vehicle owners with an eligible ILEV or Hybrid vehicle as defined by this rule must submit an application to the department for a C [~~Plate P~~]decal and C permit. The application, approved and issued by the department, shall contain the vehicle owner's name, the license plate number, the vehicle identification number, and the ILEV or Hybrid vehicle make and year model as a condition for obtaining a C [~~Plate P~~]decal and C permit.

([~~d~~]4) If more applications for a C [~~Plate Permit~~]decal are received than the total number of [~~permits~~]decals the department determines will be issued at any one time, C [~~Plate P~~]decals and C permits will be issued to randomly chosen applicants up to the number of permits that will be allowed based on the evaluation conducted under sub[~~paragraph~~]section ([~~b~~]2).

(e) Vehicle owners with a C plate issued after January 1, 2009, may transfer the plate to a newly purchased eligible ILEV or Hybrid vehicle under the processes established under this rule.

KEY: hybrid vehicles, C [~~plate~~]decal, C permit, clean fuel
Date of Enactment or Last Substantive Amendment: [~~January 5, 2009~~]2011
Authorizing, and Implemented or Interpreted Law: 41-6a-702; 72-6-121

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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, Administration
R151-14
New Automobile Franchise Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34761
FILED: 05/02/2011

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: The New Automobile Franchise Act (NAFA), Section 13-14-101 et seq., governs the distribution and sales of new motor vehicles through franchise arrangements, and regulates the relationship between franchisors and franchisees. Sections 13-14-104 and 13-14-105 authorize the Utah Motor Vehicle Franchise Advisory Board and the Department to promulgate rules regarding the administration of NAFA.

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 comments have been received regarding this rule in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to administer the registration of franchisees and franchisors and to conduct administrative proceedings before the New Motor Vehicle Franchise Advisory Board. Therefore, the rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 05/02/2011

Community and Culture, History
R212-6
State Register for Historic Resources and Archaeological Sites

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34717
FILED: 04/26/2011

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: Establish compatibility between

the State and National Registers and establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402, and 9-8-403.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides compatibility between the State and National Registers and the process for archaeological and anthropological landmark designation of sites with owner written consent. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
HISTORY
300 RIO GRANDE
SALT LAKE CITY, UT 84101-1182
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Lynette Lloyd by phone at 801-533-3553, by FAX at 801-533-3567, or by Internet E-mail at lynettelloyd@utah.gov

AUTHORIZED BY: Wilson Martin, Associate Director

EFFECTIVE: 04/26/2011

Community and Culture, History
R212-9
Board of State History as the Cultural Sites Review Committee Review Board

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34716
FILED: 04/26/2011

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 9-8-205(1)(d) provides authority for the Board of State History to function as the State Review Board for purposes of the historic preservation program. The Cultural Sites Review Committee complies with federal laws including 16 USC 470, the National Historical Preservation Act of 1966, and Code of Federal Regulations including 36 CFR 61.4 and 36 CFR 60.

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: The Division continues to receive grant money from the National Park Service for the Board of State History to operate as a Cultural Sites Review Committee. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
HISTORY
300 RIO GRANDE
SALT LAKE CITY, UT 84101-1182
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Lynette Lloyd by phone at 801-533-3553, by FAX at 801-533-3567, or by Internet E-mail at lynettelloyd@utah.gov

AUTHORIZED BY: Wilson Martin, Associate Director

EFFECTIVE: 04/26/2011

Human Services, Substance Abuse and Mental Health, State Hospital
R525-8
Forensic Mental Health Facility

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34720
FILED: 04/26/2011

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 62A-15-902(2)(c)

requires the department to "make rules providing for the allocation of beds" for the placement of individuals described in Subsection 62A-15-902(2)(a).

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 comments have been received by the division in reference to Rule R525-8.

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 mandated by statute and is needed to inform county and state judicial systems on the process by which forensic beds are accessed at the Utah State Hospital. These beds are critical to ensure due process for persons who stand accused of a crime, but display questionable capacity to understand the allegations leveled against them and/or the judicial process by which they will be judged and possibly convicted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH,
STATE HOSPITAL
UTAH STATE HOSPITAL
PROVO, UT 84603-0270
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Thom Dunford by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at tdunford@utah.gov

AUTHORIZED BY: Lana Stohl, Director

EFFECTIVE: 04/26/2011

Insurance, Administration
R590-208
Uniform Application for Certificates of Authority

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34714
FILED: 04/25/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the commissioner the authority to write rules to implement Title 31A of the Utah Code. Subsection 31A-2-202(2)(c) authorizes the commissioner to require financial reporting on forms provided by the National Association of Insurance Commissioners (NAIC). The purpose of the rule is to ensure that the commissioner's requirements for domestic, foreign, and alien insurer applications to obtain a certificate of authority in Utah shall be consistent with requirements of other states by using forms provided by the NAIC.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments since the rule was first put into effect in 2006.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that the department specify that insurers use the NAIC certificate of authority application provided by the NAIC so as to ensure uniform information from all insurers that apply. Therefore, this rule should be continued. By having the same certificate of insurance application, the Department makes it easier and less time consuming for insurers to apply for a certificate of insurance from more than one state at a time.

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: 04/25/2011

Insurance, Administration
R590-235
Medicare Prescription Drug Plan

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34713
FILED: 04/25/2011

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 31A-2-201(3) authorizes the commissioner to administer and enforce Title 31A and make rules to implement its provisions. The purpose of this rule is to establish licensing and regulatory requirements for a stand-alone prescription drug plan (PDP). These PDPs provide Medicare Part D benefit plans.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule within the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes standards and requirements the PDP must meet before selling insurance. These standards are much the same as other insurers, requiring the Plan to submit quarterly and annual statements plus comply with capital and surplus limits set within the rule and risk-based capital requirements set within the code. Linking these standards and requirements with the PDP allows the department to check their financial stability giving greater assurance to consumer of the ability of the Plan to provide the benefits within their policy. 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: 04/25/2011

Technology Services, Administration
R895-5
Acquisition of Information Technology

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34722
FILED: 04/27/2011

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 63F-1-205 requires that the Chief Information Officer (CIO) establish by administrative rule, in accordance with Section 63F-1-206, standards under which an agency must obtain approval from the CIO before acquiring information technology (IT) items.

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 comments were received during and since the last five-year review of the rule from interested persons supporting or opposing the 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 continuation of the rule is required by Section 63F-1-205 to establish standards for IT purchases. Therefore, this rule should be continued.

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

TECHNOLOGY SERVICES
ADMINISTRATION
ROOM 6000 STATE OFFICE BUILDING
450 N STATE ST
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

AUTHORIZED BY: J Stephen Fletcher , CIO and Executive Director

EFFECTIVE: 04/27/2011

Technology Services, Administration
R895-8
State Privacy Policy and Agency Privacy Policies

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34723
FILED: 04/27/2011

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 63F-1-206 requires the Department of Technology Services to implement a rule that provides for standards related to the privacy policies of websites operated by or on behalf of an executive branch agency.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the 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 required by Section 63F-1-206 to establish a statewide policy for informing the public how personally identifiable information is collected and used by the State of Utah web sites.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TECHNOLOGY SERVICES
ADMINISTRATION
ROOM 6000 STATE OFFICE BUILDING
450 N STATE ST
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

AUTHORIZED BY: J Stephen Fletcher , CIO and Executive Director

EFFECTIVE: 04/27/2011

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
LEGISLATIVE NONREAUTHORIZATION

Section 63G-3-502 provides that "every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature." To do this, the Legislature's Administrative Rules Review Committee prepares omnibus legislation each year. As part of this legislation, the Legislature may elect not to reauthorize a rule or a part of a rule down to the complete paragraph level. When this occurs, the rule or part of a rule is removed from the Code. The list below represents rules that the Legislature has elected not to reauthorize.

Legislative nonreauthorization of administrative rules is governed by Section 63G-3-502.

Environmental Quality, Environmental Response And Remediation
R311-201-11
Work Performed by Licensed Engineers or Geologists

LEGISLATIVE NONREAUTHORIZATION
DAR FILE NO.: 34739
FILED: 04/28/2011

SUMMARY: Section R311-201-11 was not reauthorized under H.B. 228 (2011 General Session). Therefore, it is removed from the Utah Administrative Code as of 05/01/2011.

EFFECTIVE: 05/01/2011

Environmental Quality, Environmental Response And Remediation
R311-207-9
Third Party Consultant

LEGISLATIVE NONREAUTHORIZATION
DAR FILE NO.: 34740
FILED: 04/28/2011

SUMMARY: Section R311-207-9 was not reauthorized under H.B. 228 (2011 General Session). Therefore, this section is removed from the Utah Administrative Code as of 05/01/2011.

EFFECTIVE: 05/01/2011

End of the Notices of Legislative Nonreauthorization Section

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

Commerce
Administration
No. 34479 (NEW): R151-4. Department of Commerce Administrative Procedures Act Rule
Published: 03/15/2011
Effective: 04/21/2011

No. 34480 (REP): R151-46b. Department of Commerce Administrative Procedures Act Rules
Published: 03/15/2011
Effective: 04/21/2011

Occupational and Professional Licensing
No. 34469 (AMD): R156-46b. Division Utah Administrative Procedures Act Rule
Published: 03/15/2011
Effective: 04/25/2011

No. 34470 (AMD): R156-55a. Utah Construction Trades Licensing Act Rule
Published: 03/15/2011
Effective: 04/25/2011

Real Estate
No. 34476 (AMD): R162-103. Appraisal Education Requirements
Published: 03/15/2011
Effective: 04/27/2011

Community and Culture
Olene Walker Housing Trust Fund
No. 34455 (AMD): R235-1. Olene Walker Housing Loan Fund (OWHLF)
Published: 03/15/2011
Effective: 04/27/2011

Governor
Economic Development, Pete Suazo Utah Athletic Commission
No. 34482 (AMD): R359-1-511. Event Officials
Published: 03/15/2011
Effective: 04/26/2011

No. 34483 (AMD): R359-1-512. Announcer
Published: 03/15/2011
Effective: 04/26/2011

No. 34484 (AMD): R359-1-515. Competing in an Unsanctioned Unarmed Combat Event
Published: 03/15/2011
Effective: 04/26/2011

Health
Health Care Financing
No. 34147 (R&R): R410-14. Administrative Hearing Procedures
Published: 11/01/2010
Effective: 04/25/2011

No. 34147 (CPR): R410-14. Administrative Hearing Procedures
Published: 03/15/2011
Effective: 04/25/2011

Natural Resources
Forestry, Fire and State Lands
No. 34394 (NEW): R652-122. County Cooperative Agreements with State for Fire Protection
Published: 02/15/2011
Effective: 04/28/2011

Public Safety
Fire Marshal
No. 34487 (AMD): R710-6-4. LP Gas Certificates
Published: 03/15/2011
Effective: 04/21/2011

Transportation
Program Development
No. 34451 (AMD): R926-6. Transportation Corridor Preservation Revolving Loan Fund
Published: 03/15/2011
Effective: 04/21/2011

No. 34460 (AMD): R926-9. Establishment Designation and Operation of Tollways
Published: 03/15/2011
Effective: 04/21/2011

Preconstruction
No. 34452 (AMD): R930-5-13. Notice on Intended Action
Published: 03/15/2011
Effective: 04/21/2011

Transportation Commission
Administration
No. 34462 (AMD): R940-1. Establishment of Toll Rates
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End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2011 through May 02, 2011. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules 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).

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/).

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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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