

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT

Filed July 16, 1998 12:00 a.m. - July 31, 1998 11:59 p.m.

Number 98-16  
August 15, 1998

Kenneth A. Hansen, Director  
Nancy L. Lancaster, Editor

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

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

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Bulletin* and *Digest* are printed and distributed semi-monthly by Legislative Printing. Annual subscription rates (24 issues) are \$150 for the *Bulletin* and \$35 for the *Digest*. Inquiries concerning subscription, billing, or changes of address should be addressed to:

LEGISLATIVE PRINTING  
PO BOX 140107  
SALT LAKE CITY, UT 84114-0107  
(801) 538-1103  
FAX (801) 538-1728

ISSN 0882-4738



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# SPECIAL NOTICE

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## EXECUTIVE ORDER

**Whereas**, the danger from wildland fires is extremely high throughout the State of Utah; and

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

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

**Whereas**, immediate action is required to suppress the fires to protect public safety, property, natural resources and the environment; and

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

**Now, Therefore**, I, Michael O. Leavitt, Governor of the State of Utah, by virtue of the power vested in me by the constitution and the laws of the State of Utah;

**Do Hereby Order That:** It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of July 30, 1998, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**In Testimony, Whereof**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, this 30th day of July 1998.

(State Seal)

**Michael O. Leavitt**  
**Governor**

Attest:

**Olene S. Walker**  
**Lieutenant Governor**

## NOTICES OF PROPOSED RULES

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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 July 16, 1998, 12:00 a.m., and July 31, 1998, 11:59 p.m., are included in this, the August 15, 1998, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are 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 September 14, 1998. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through December 13, 1998, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on PROPOSED RULES. *Comment may be directed to the contact person identified on the RULE ANALYSIS for each rule.*

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page.**



**Agriculture and Food, Animal Industry**  
**R58-1**  
**Admission and Inspection of Livestock,**  
**Poultry, and Other Animals**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21337

FILED: 07/31/1998, 07:54

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It is the intent of the changes in Section R58-1-5 to eliminate and reduce the spread of Trichomoniasis in livestock.

SUMMARY OF THE RULE OR CHANGE: This amendment includes a section to control the spread of Trichomoniasis among livestock.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 4, Chapter 31, and Subsection 4-2-2(1)(j)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No anticipated cost or savings to the state budget--testing will be owner's expense to be paid to an accredited vet or an approved lab.

❖LOCAL GOVERNMENTS: No anticipated cost or savings to local government--testing will be owner's expense.

❖OTHER PERSONS: There will be a cost to the owners, either by the Federal Lab or by certified veterinarians, for the testing of bulls for Trichomoniasis.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Cost to owner for treatment of Trichomoniasis, if the bull tests positive.

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

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

Agriculture and Food  
 Animal Industry  
 350 North Redwood Road  
 PO Box 146500  
 Salt Lake City, UT 84114-6500, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dr. Earl Rogers at the above address, by phone at (801) 538-7162, by FAX at (801) 538-7126, or by Internet E-mail at [agmain.erogers@state.ut.us](mailto:agmain.erogers@state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Cary G. Peterson, Commissioner

**R58. Agriculture and Food, Animal Industry.**

**R58-1. Admission and Inspection of Livestock, Poultry, and Other Animals.**

**R58-1-2. Definitions.**

A. "Approved Livestock Market" - A livestock market which meets the requirements as outlined in 9 CFR 78, January 1, 1997 edition, Title 4, Chapter 30, and Rule R58-7.

B. "Livestock Market Veterinarian" - A Utah licensed and accredited veterinarian appointed by the Department of Agriculture and Food to work in livestock markets in livestock health and movement matters.

C. "Official Random Sample Test, 95/10" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least 10 percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

Less than 100 head -- Test 25

100 - 200 head ----- Test 27

201 - 999 head ----- Test 28

1,000 and over ----- Test 29

D. "Official Random Sample Test, 95/5" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least five percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

Less than 100 head -- Test 45

100 - 200 head ----- Test 51

201 - 999 head ----- Test 57

1,000 and over ----- Test 59

E. "Qualified Feedlot" - A feedlot approved by the Utah Department of Agriculture and Food to handle INTRASTATE heifers, cows or bulls which originate from Utah herds. These animals shall be confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter.

F. "Reportable Disease List" - A list of diseases and conditions developed by the state veterinarian that may affect the health and welfare of the animal industry of the state, reportable to the state veterinarian.

G. "Test Eligible Cattle" - All cattle or bison over six months of age, except:

1. Steers, spayed heifers;

2. Official calfhood vaccinates of dairy breeds under 20 months of age and beef breeds under 24 months of age which are not parturient, springers, or post parturient;

3. Official calfhood vaccinates, dairy or beef breeds of any age, which are Utah Native origin.

4. Utah Native Bulls from non-infected herds.

H. "Official Calfhood Vaccinate" - Female cattle of a dairy breed or beef breed vaccinated by a Veterinary Services representative, State certified technician, or accredited Veterinarian with an approved dose of Brucella Abortus RB51 Vaccine or other USDA approved agent while from 4 to 12 months of age in

accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate within 30 days to the State Veterinarian.

I. "Exposed Animal", "Reactor", "Suspect", as defined in the United States Department of Agriculture; Animal and Plant Health Inspection Service and Veterinary Services Brucellosis Eradication Uniform Methods and Rules and 9 CFR 78.

J. "Approved Livestock Dealer handling facilities." A Livestock facility approved by the Utah Department of Agriculture and Food to handle Livestock for testing vaccination in change of ownership. The Facility will maintain chutes for handling of cattle. Also separate pens for corralling of cattle.

K. "Common Grazing Allotment." Lands grazed by cattle belonging to more than one owner per allotment and where such lands are administered by a government entity or grazing association.

#### **R58-1-5. Cattle.**

A. Import Permit and Certificate of Veterinary Inspection.

1. No cattle may be imported into Utah without an import permit issued by the Department of Agriculture and Food. A Certificate of Veterinary Inspection and an import permit must accompany all cattle imported into the state. All cattle must carry some form of individual identification, a brand registered with an official brand agency, ear tag or a registration tattoo. Identification must be listed on the Certificate of Veterinary Inspection. Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection. The import permit number must be listed on the Certificate of Veterinary Inspection. This includes exhibition cattle. Commuter cattle are exempt as outlined in Subsection R58-1-5(B).

2. The following cattle are exempted from (1) above:

a. Cattle consigned directly to slaughter at a state or federally inspected slaughter house; and

b. Cattle consigned directly to a State or Federal approved Auction Market.

c. Movements under Subsections R58-1-5(A)(2)(a), and R58-1-5(A)(2)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and purpose of movement.

B. Commuter Cattle. Commuter, temporary grazing, cattle may enter Utah or return to Utah after grazing if the following conditions are met.

1. A Certificate of Veterinary Inspection or a commuter permit approved by the import state and the State of Utah must be obtained prior to movement into Utah. This will allow movements for grazing for current season if the following conditions are met:

a. All cattle shall meet testing requirements as to State classification for interstate movements as outlined in 9 CFR 1-78; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, May 6, 1992 and approved by cooperating States.

b. Commuter cattle shall not be mixed with quarantined, exposed, or suspect cattle nor change ownership during the grazing period.

2. No quarantined, exposed or reactor cattle shall enter Utah.

C. Brucellosis. Prior to importation of cattle into Utah the following health restrictions must be met.

1. Heifers of vaccination age between four and 12 months must be officially vaccinated for brucellosis prior to entering Utah. All female cattle imported after July 1, 1984, must have a legible brucellosis calthood vaccination tattoo to be imported or sold within the State of Utah, unless going directly to slaughter or qualified feedlot to be sold for slaughter or to an approved market to be sold for slaughter or for vaccination.

a. Heifers of vaccination age may be vaccinated upon arrival by special permit.

2. A negative test for brucellosis is required prior to movement into Utah for the following test-eligible cattle:

a. Bulls over 12 months must have a negative blood test for brucellosis within 30 days prior to movement. The entry of vaccinated bulls is not permitted.

b. All vaccinated dairy cattle over 20 months and all beef cattle over 24 months except those originating in a certified brucellosis free herd or in a free state from a certified breeders herd of origin.

c. There may be an epidemiologic surveillance of imported cattle that remain in Utah, and they may be subject to a 45-120 day retest at owner's expense as determined by a brucellosis epidemiologist. Import cattle which are resold to leave the State before retest day, are free to move.

3. A brucellosis test is not required for:

a. Vaccinated cattle from a Brucellosis Certified Free Herd or Certified Breeding Herds from free states. Brucellosis Certified Free Herd number, date and results of last test must be entered on the Certificate of Veterinary Inspection.

b. Official vaccinated female dairy cattle under 20 months or official vaccinated female beef cattle under 24 months age. The Certificate of Veterinary Inspection must show vaccination tattoo and the official ear tag number or registration tattoo.

c. Steers and spayed heifers.

4. State Brucellosis Classification Requirements:

a. Cattle for breeding purposes from Class A States moving from farm of origin or Livestock market to the State of Utah:

(1) Permit.

(2) Official Vaccination for Brucellosis

(3) Negative Brucellosis test within 30 days before moving.

(4) A post movement test in 45 to 120 days after arrival.

b. Cattle for breeding from Class B States moving from farm of origin or livestock market into the State of Utah:

(1) Permit.

(2) Official Vaccination for Brucellosis.

(3) Negative Brucellosis test within 30 days.

(4) Quarantined for retest in 45 to 120 days after arrival.

c. Cattle for breeding from Class C States moving from farm of origin or livestock market into the State of Utah:

(1) Permit.

(2) Official Vaccination for Brucellosis.

(3) Two consecutive negative tests at least 60 days apart.

(4) Certificate.

(5) Quarantined for retest 45 to 120 days after arrival.

5. No reactor cattle or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to a slaughtering establishment where recognized state or federal

meat inspection is maintained. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

6. Entry of cattle which have been retattooed is not permitted unless they are moved for immediate slaughter to a slaughtering establishment where state or federal inspection is maintained or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.

7. Entry of cattle which have been adult vaccinated is not permitted unless they are for immediate slaughter where state or federal inspection is maintained.

D. Tuberculosis.

A negative test is required within 60 days prior to shipment for all breeding cattle originating within a quarantined area or from reactor or exposed herds.

E. Scabies.

No cattle affected with, or exposed to scabies shall be trailed, driven, shipped or otherwise moved into Utah. Cattle from a county where scabies have been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection; also the approved vat number and location.

F. Splenic or Tick Fever. No cattle infested with ticks, *Margaropus annulatus*, or exposed to tick infestations shall be shipped, trailed, or driven, or otherwise imported into the State of Utah for any purpose.

G. Exhibitions, Fairs, and Shows.

1. Dairy cattle and cattle for breeding purposes imported for exhibition or show purposes only to be returned to state of origin may enter provided:

a. The cattle are accompanied by the proper Certificate of Veterinary Inspection and import permit.

b. The cattle must have negative T.B. test within 60 days if coming from quarantined T.B. areas or exposed or reactor herds.

c. The cattle must have a negative brucellosis test within 30 days prior to entrance. Vaccinates under age are acceptable.

H. Trichomoniasis.

1. All Utah resident bulls over nine months of age, going onto a common grazing allotment, must test negative for Trichomoniasis. Testing shall be conducted annually within three months prior to a bulls exposure to cows and entering the common grazing allotment; except that testing performed at the conclusion of the previous breeding season will be acceptable for the current breeding season provided that the bulls have had no exposure to females in the interim.

2. All breeding bulls entering Utah which are over nine months of age, must test negative for Trichomoniasis by an accredited veterinarian within 30 days prior to entry into Utah.

3. Any Certificate of Veterinary Inspection issued for bulls covered under this rule, shall bear the statement, "Trichomoniasis has not been diagnosed in the herd of origin within the last 12 months."; except that, bulls from herds that have tested positive for Trichomoniasis within the previous 12 months are required to have three negative tests, no less than one week apart, prior to entry into Utah.

4. All Utah bulls which are tested shall be tagged with a current Official State of Utah Trichomoniasis test tag by the accredited veterinarian performing the test. Official tags shall be only those as are authorized by the Utah Department of Agriculture

and Food, and approved by the State Veterinarian's office. Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by an accredited veterinarian upon receipt of the Trichomoniasis test charts from the testing veterinarian.

5. Trichomoniasis testing in Utah shall be performed only by accredited veterinarians and approved laboratories that have been certified by the Utah Department of Agriculture and Food. An "official test" shall be one that is received by the lab within 48 hours of collection and shall not have been subjected to extreme temperatures in excess of 85 degrees Fahrenheit, or freezing, for a period of time longer than ten minutes. Test samples not meeting this criteria will be discarded. Acceptable media shall be Diamond's Media, or the "pouch" method, or other department approved transport media.

6. All bulls testing positive for Trichomoniasis must be reported immediately to the owner and the State Veterinarian by the veterinarian and laboratory performing the test. The owner shall be required to notify fellow members of the common grazing allotment and neighboring (contiguous) cattlemen within ten days following such notification by his veterinarian or laboratory.

7. Exceptions to the above rules shall include dairy bulls in total confinement operations, bulls consigned directly to slaughter at an approved slaughter facility, and bulls consigned directly to a "Qualified Feedlot" for finish feeding and slaughter.

8. All bulls which test positive to Trichomoniasis must go directly to slaughter at an approved slaughter facility, or to a "Qualified Feedlot: for finish feeding and slaughter within 14 days. Such bulls going to slaughter shall carry a VS 1-27 form issued by the testing veterinarian or other regulatory official. A bull which tests positive to Trichomoniasis may not be sold at auction.

9. Out of state "commuter" cattle grazing in Utah shall, also, be required to meet the requirements of Section R58-1-5-H.

10. To reduce the threat of this disease, the Utah Department of Agriculture and Food, in conjunction with Utah State University, shall provide an educational program to inform cattle producers of the need to test for Trichomoniasis and the details of this program. This information shall be available upon request from the department.

**KEY: disease control**

**[August 15, 1997]1998**

**Notice of Continuation June 19, 1997**

**4-31**

**4-2-2(1)(j)**



Commerce, Real Estate  
**R162-102**  
 Licensing Procedures

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 21335

FILED: 07/28/1998, 16:19

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes reflect requirements made by the federal Appraisal Qualifications Board for procedure in issuing a six-month temporary permit.

SUMMARY OF THE RULE OR CHANGE: The changes allow for renewal of a six-month temporary permit, and require the applicant to provide additional information with their application

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2b-23  
FEDERAL REQUIREMENT FOR THIS RULE: 12 U.S.C. 3351(a)(1)

ANTICIPATED COST OR SAVINGS TO:  
❖THE STATE BUDGET: Costs will remain the same for the state.  
❖LOCAL GOVERNMENTS: There will be no cost impact on local government because this is a permit issued by the state and renewed by the state.  
❖OTHER PERSONS: Some modest savings in that the applicant may renew the temporary permit without making a full application for a new permit.  
COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs will be slightly less expensive for applicants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this rule amendment is to allow temporary six-month permits issued to non-resident appraisers to be renewed for an additional period. There is no fiscal impact caused by this amendment with the possible exception of minor savings on the part of the applicant who will not be required to file a complete new application when merely renewing an existing permit.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Commerce  
Real Estate  
Second Floor, Heber Wells Building  
160 East 300 South  
PO Box 146711  
Salt Lake City, UT 84114-6711, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

**R162. Commerce, Real Estate.  
R162-102. Licensing Procedures.**

.....

**R162-102-4. Six-Month Temporary Permits.**

102.4.1 A non-resident of this state may obtain a [~~non-renewable~~] permit for a period of six months to practice as a registered or certified appraiser in this state. An applicant must:

102.4.1.1 Submit an application in writing requesting registration or certification;

102.4.1.2 Provide a complete history sent directly to the Division by his home state, and any other state in which he holds a license or certification, which indicates the type of license held, the date the current license expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual's appraisal license;

102.4.1.3 Sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state; [~~and~~]

102.4.1.4 Pay an application fee in the amount established by the Division[-]; and

102.4.1.5 Provide the starting date of the appraisal assignment for which the temporary permit is being obtained.

102.4.2 A temporary permit may be renewed once by paying an additional fee and submitting the forms required by the Division.

.....

**KEY: real estate appraisal, licensing  
199[7]8 61-2b-23**



**Environmental Quality, Drinking Water  
R309-211  
Facility Design and Operation:  
Transmission and Distribution  
Pipelines**

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE No.: 21302  
FILED: 07/16/1998, 07:01  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Designers of distribution systems noted that recent rule changes (repealing R309-112 and making effective R309-211) excluded any mention of the American Water Works Association (AWWA) Standards for Mechanical Properties for plastic pipe while including standards for other piping material such as ductile iron, steel, concrete, etc. They questioned whether plastic pipe was still accepted. It was not

our intent to exclude these standards for plastic pipe when R309-112 was repealed and replaced with R309-211, therefore we propose to add AWWA Standards C900-97 through C950-95 to the standards listed in Subsection R309-211-6(3). We have also noted some typographical errors and a particular paragraph included when it was meant only as guidance, only to be published in our version and clearly marked as guidance. Therefore we intend to also make those corrections at this time.

**(DAR Note:** R309-112 was a proposed repeal that is effective as of March 1, 1998. It was published in the December 15, 1997, issue of the *Utah State Bulletin* under DAR No. 20296. R309-211 was a proposed new rule that was published in the May 1, 1997, issue of the *Utah State Bulletin*, under DAR No. 18940. It had a change in proposed rule (CPR) in the September 15, 1997, issue of the *Utah State Bulletin* that became effective on January 1, 1998.)

SUMMARY OF THE RULE OR CHANGE: Add "AWWA Standards C900-97 through C950-95" to the standards referenced in Subsection R309-211-6(3); remove the last two sentences of Subsection R309-211-8(5) along with Subsections R309-211-8(5)(a) through R309-211-8(5)(g); and correct the names of certain backflow assemblies and the reference to the plumbing code found in Subsection R309-211-13(2).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ANSI/AWWA C900-97, ANSI/AWWA C901-96, ANSI/AWWA C902-88, ANSI/AWWA C905-88, ANSI/AWWA C906-90, ANSI/AWWA C907-91, ANSI/AWWA C908-97, and ANSI/AWWA C950-95 (paper copies previously sent to DAR via mail)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--there will be no change in the way the division conducts reviews or maintains documents referenced by rule and therefore there will be no additional cost nor any savings as a result of these amendments.

❖LOCAL GOVERNMENTS: Municipalities and districts operating a public water system (PWS) should realize a savings of approximately \$1 to \$3 per lineal foot of installed pipeline. For local government not operating a PWS there is no impact.

❖OTHER PERSONS: Contractors installing pipelines for PWSs should also realize similar savings as indicated above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Designers of PWSs would have a broader range of piping materials from which to select, but this should not affect their cost of conducting business. PWSs, either publicly owned or privately owned, should realize a savings per lineal foot of installed pipeline as indicated above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments regarding cost.

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

Environmental Quality  
Drinking Water  
Second Floor  
150 North 1950 West  
PO Box 144830  
Salt Lake City, UT 84114-4830, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Michael B. Georgeson or William B. Birkes at the above address, by phone at (801) 536-4197 or (801) 536-4201, by FAX at (801) 536-4211, or by Internet E-mail at mgeorges@deq.state.ut.us or bbirkes@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Kevin W. Brown, Director and Executive Secretary of the Drinking Water Board

**R309. Environmental Quality, Drinking Water.  
R309-211. Facility Design and Operation: Transmission and Distribution Pipelines.**

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**R309-211-6. Component Materials and Design.**

(1) NSF Standard for Health Effects.

All materials which may contact drinking water, including pipes, gaskets, lubricants and O-Rings, shall be ANSI-certified as meeting the requirements of NSF Standard 61, Drinking Water System Components - Health Effects. To permit field-verification of this certification, all such components shall be appropriately stamped with the NSF logo.

(2) Restrictions on Asbestos and Lead.

(a) The use of asbestos cement pipe shall not be allowed.

(b) Pipes and pipe fittings containing more than 8% lead shall not be used. Lead-tip gaskets shall not be used. Repairs to lead-joint pipe shall be made using alternative methods.

(3) AWWA Standards for Mechanical Properties.

Pipe, joints, fittings, valves and fire hydrants shall conform to NSF Standard 61 or Standard 14, and applicable sections of ANSI/AWWA Standards C104-95 through C550-90 and C900-97 through C950-95.

(4) Used Materials.

Only materials which have been used previously for conveying potable water may be reused. Used materials shall meet the above standards, be thoroughly cleaned, and be restored practically to their original condition.

(5) Fire Hydrant Design.

Hydrant drains shall not be connected to or located within 10 feet of sanitary sewers or storm drains.

(6) Air Relief Valves.

At high points in water mains where air can accumulate, provisions shall be made to remove air by means of hydrants or air relief valves. Automatic air relief valves shall not be used in situations where flooding may occur.

(a) Air Relief Valve Vent Piping.

The open end of an air relief vent pipe from automatic valves shall, where possible as determined by public water system management, be extended to at least one foot above grade and provided with a screened (#14 mesh, non-corrodible) downward elbow. Alternately, the open end of the pipe may be extended to as little as one foot above the top of the pipe if the valve's chamber is not subject to flooding and provided with a drain-to-daylight (See (b) below). Blow-offs or air relief valves shall not be connected directly to any sewer.

(b) Chamber Drainage.

Chambers, pits or manholes containing valves, blow-offs, meters, other such appurtenances to a distribution system, shall not be connected directly to any storm drain or sanitary sewer. They shall be provided with a drain to daylight. Where this is not possible, underground gravel filled absorption pits may be used if the site is not subject to flooding and conditions will assure adequate drainage. Where a chamber contains an air relief valve, and it is not possible to provide a drain-to-daylight, the vent pipe from the valve shall be extended to at least one foot above grade (See (a) above). Only when it is both impossible to extend the vent pipe above grade, and impossible to provide a drain-to-daylight may a gravel filled sump be utilized to provide chamber drainage (assuming local ground conditions permit adequate drainage without ground water intrusion).

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**R309-211-8. Installation of Water Mains.**

(1) Standards.

(a) The specifications shall incorporate the provisions of the manufacturer's recommended installation procedures or the following standards:

(i) AWWA Standard C600-87, Installation of Ductile Iron Water Mains and Their Appurtenances

(ii) ASTM D2774, Recommended Practice for Underground Installation of Thermoplastic Pressure Piping and PVC Pipe

(b) The provisions of the following publication shall be followed for PVC pipe design and installation:

PVC Pipe - Design and Installation, AWWA Manual M23, 1990, published by the American Water Works Association

(2) Bedding.

A continuous and uniform bedding shall be provided in the trench for all buried pipe. Stones larger than the backfill materials described below shall be removed for a depth of at least six inches below the bottom of the pipe.

(3) Backfill.

Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. The material and backfill zones shall be as specified by the standards referenced in Subsection (1), above. As a minimum:

(a) For plastic pipe, backfill material with a maximum particle size of 3/4 inch shall be used to surround the pipe.

(b) For ductile iron pipe, backfill material shall contain no stones larger than 2 inches.

(4) Dropping Pipe into Trench.

Under no circumstances shall the pipe or accessories be dropped into the trench.

(5) Burial Cover.

All water mains shall be covered with sufficient earth or other insulation to prevent freezing unless they are part of a non-community system that can be shut-down and drained during winter months when temperatures are below freezing. ~~Pipe shall be buried at least 12 inches below maximum expected frost penetration.~~ The following is a list of reported pipe burial depths in Utah which may serve as a guide in this respect:

- ~~(a) Logan - 5ft.~~
- ~~(b) Salt Lake City - 3.5 ft. (5 ft. in high benches)~~
- ~~(c) Alta/Snowbird - 6 ft (7 ft. if under roadway)~~
- ~~(d) St. George - 3 ft.~~
- ~~(e) Park City - 5 ft. (7 ft. above 7000 ft. elevation)~~
- ~~(f) Richfield - 4 ft.~~
- ~~(g) Moab - 4 ft.]~~

(6) Thrust Blocking.

All tees, bends, plugs and hydrants shall be provided with reaction blocking, tie rods or joints designed to prevent movement.

(7) Pressure and Leakage Testing.

All types of installed pipe shall be pressure tested and leakage tested in accordance with AWWA Standard C600-93.

(8) Surface Water Crossings.

(a) Above Water Crossings

The pipe shall be adequately supported and anchored, protected from damage and freezing, and accessible for repair or replacement.

(b) Underwater Crossings

A minimum cover of two feet or greater, as local conditions may dictate, shall be provided over the pipe. When crossing water courses which are greater than 15 feet in width, the following shall be provided:

(i) The pipe shall be of special construction, having restrained joints for any joints within the surface water course and flexible restrained joints at both edges of the water course.

(ii) Valves shall be provided at both ends of water crossings so that the section can be isolated for testing or repair; the valves shall be easily accessible, and not subject to flooding; and the valve nearest to the supply source shall be in a manhole.

(iii) Permanent taps shall be made on each side of the valve within the manhole to allow insertion of testing equipment to determine leakage and for sampling purposes.

(9) Sealing Pipe Ends During Construction.

The open ends of all pipeline under construction shall be covered and effectively sealed at the end of the day's work.

(10) Disinfecting Water Distribution Systems.

All new water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The specifications shall include detailed procedures for the adequate flushing, disinfection and microbiological testing of all water mains. On all new and extensive distribution system construction, evidence of satisfactory disinfection shall be provided to the Division. Samples for coliform analyses shall be collected after disinfection is complete and the system is refilled with potable water. A standard heterotrophic plate count is advisable. The use of water for culinary

purposes shall not commence until the bacteriologic tests indicate the water to be free from contamination.

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**R309-211-13. Operation and Maintenance.**

(1) Disinfection After Line Repair.

The disinfection procedures of Section 10, AWWA Standard C651-92 shall be followed if any water main is cut into or repaired.

(2) Cross Connections.

The water supplier shall not allow a connection which may jeopardize water quality. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements [~~of Chapter 10~~] of the [~~Uniform~~] Utah Plumbing Code shall be met with respect to cross connection control and backflow prevention.

Suppliers shall maintain an inventory of each pressure [~~atmospheric~~] vacuum breaker assembly, spill-resistant vacuum breaker assembly, double check valve assembly, reduced pressure [~~zone~~] principle backflow prevention assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work. This responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 26-1-31 of the Utah Code Annotated 1953 as amended.

(3) NSF Standards.

All pipe and fittings used in routine operation and maintenance shall be ANSI-certified as meeting NSF Standard 61 or Standard 14.

(4) Seasonal Operation.

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651 for pipelines and AWWA Standard C652 for storage facilities prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

**KEY: drinking water, transmission and distribution pipelines, connections, water hauling**  
[~~January 1,~~]1998 19-4-104



Human Resource Management,  
Administration  
**R477-1**  
Definitions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21303

FILED: 07/17/1998, 10:59

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adjust two definitions to reflect recent changes in the state classification system and eliminate an internal inconsistency in the rules regarding state policy on sexual harassment.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-1-1(85), "Promotion," and Subsection R477-1-1(110)--"Voluntary reassignment," until recently, all positions were separated by at least two salary steps on the pay plan. Recent reclassification work has created positions separated by only one step negating the two step minimum in definition. Subsection R477-1-1(102), "Sexual Harassment"--changes in this definition are needed to clarify state policy more precisely following a hearing before the Career Service Review Board (Dixon v. Department of Natural Resources, Case No. 6CSR55). The Department of Human Resource Management (DHRM) is making corresponding changes to Section R477-15-2.

(DAR Note: The corresponding amendment to R477-15 is under DAR No. 21309 in this *Bulletin*.)

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

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--this is a definitional change which has no effect on agency operating procedures and will not impact on the budget.

❖LOCAL GOVERNMENTS: None--this rule only affects state government.

❖OTHER PERSONS: None--this rule only affects state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. There may be a very slight, indirect effect if there is a cost incurred by an agency and if that agency passes these on to businesses with increases in fees. This rule change will not increase agency costs and will thus have no effect on businesses.

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

Human Resource Management  
Administration

2120 State Office Building  
PO Box 141531  
Salt Lake City, UT 84114-1531, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**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: A discretionary act of termination resulting from an employee's unexcused absence from work or failure to come to work for three consecutive days when the employee is capable, but does not properly notify his supervisor.

(2) Active Duty: Full-time active military and reserve duty; a term used for veteran's preference adjustments. It does not include active or inactive duty for training or initial active duty for training.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments. This time is calculated in increments of 15 minutes or more for purposes of overtime accrual, and shall not include "on-call," holiday leave, or any other leave time taken off during the work period.

(4) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(5) Administrative Adjustment: A DHRM approved change of a position from one job to another job or salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(6) Administrative Salary Decrease: A salary decrease of one or more pay steps based on non-disciplinary administrative reasons determined by an agency executive director or commissioner.

(7) Administrative Salary Increase: A salary increase of one or more pay steps based on special circumstances determined by an agency executive director or commissioner.

(8) Agency: Any department, division, institution, office, commission, board, committee, or other entity of state government.

(9) Agency Head: The chief executive officer of each agency or their designated appointee.

(10) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(11) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.

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

(13) Assignment: Appointment of an employee to a position.

(14) "At will" Employee: An individual appointed to work for no specified period of time or one who has not acquired career service status and may be terminated at any time without just cause.

(15) Bumping: A procedure that may be applied in a reduction-in-force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points who are in the same categories of work identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(16) Career Exempt Employee: An employee appointed to a position exempt from career service in state employment and who serves at the pleasure of the appointing authority.

(17) Career Exempt Position: A position in state service exempted by law from provisions of competitive career service, as prescribed in 67-19-15 and in R477-2-1(1).

(18) Career Mobility: A time-limited of an employee to another position of equal or higher salary for purposes of professional growth or fulfillment of specific organizational needs.

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

(20) Career Service Status: Status granted to employees who successfully completes a probationary period for competitive career service positions.

(21) Category of Work: Jobs, work units, or other definable categories of work within departments, divisions, institutions, offices, commissions, boards or committees that are designated by the agency head as the Category of Work to be eliminated through a reduction-in-force. These are subject to review by the Executive Director, DHRM.

(22) Certifying: The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.

(23) Change of Workload: A change in the work requirements or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(24) Classification Grievance: The approved procedure by which a career service employee may grieve a formal DHRM decision regarding the classification of the employee's position.

(25) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

(26) Constant Review: A period of formal frequent review of an employee, not to exceed six months, resulting from substandard performance or unacceptable behavior, as defined by Utah law and contained in these rules. Removal from constant review requires a formal evaluation.

(27) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified



time. The contractor shall be responsible for paying all taxes and FICA payments, and shall not accrue benefits.

(28) Demeaning Behavior: Sex-based behavior which lowers the status, dignity or standing of any other individual.

(29) Demotion: A disciplinary action resulting in a salary reduction on the current salary range or the movement of an incumbent from one position to another position having a lower salary range, including a reduction in salary. If this action is taken for a limited time period it shall only be within the current salary range.

(30) Department: The Department of Human Resource Management.

(31) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

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

(33) DHRM: The Department of Human Resource Management.

(34) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101, 1994 edition; Equal Employment Opportunity Commission regulation, 29 CFR 1630 1993 edition; including exclusions and modifications.

(35) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

(36) Discrimination: Unlawful action against an employee or applicant based on age, disability, national origin, political or religious affiliation, race, sex, military status or affiliation, or any other non-merit factor, as specified by law.

(37) Dismissal: A separation from state employment for cause.

(38) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85, 1993 edition, requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(39) Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324, 1988 edition, as amended, that employers verify the identity and eligibility of individuals for employment in the United States.

(40) "Escalator" Principle: Under USERRA, returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(41) Equal Employment Opportunity (EEO): Non-discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

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

(43) Executive Director: The executive director of the Department of Human Resource Management.

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

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

(46) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201, 1993 edition et seq.

(47) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

(48) FLSA Non-Exempt: Employees who are not exempt from the Fair Labor Standards Act.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) 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.

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

(52) Gross Compensation: Employee's total earnings, taxable and untaxable, as shown on the employee's paycheck stub.

(53) Hiring List: A list of names of qualified applicants who have successfully met the examination requirements for appointment to the position.

(54) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by sex.

(55) HRE: Human Resource Enterprise; the state human resource management information system.

(56) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

(57) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(58) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(59) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those classes of positions they have previously held successfully in Utah state government employment or for those classes of positions which they have successfully supervised and for which they satisfy job requirements.

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

(61) Involuntary Reassignment: Management initiated movement of an employee from his current position to a position of an equal or lower salary range, or to a different work location or organization unit for administrative, corrective action or other reasons not included in the definition of demotion or reclassification.

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

(63) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

(64) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(65) Job Requirements: Skill requirements defined at the job level.

(66) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(67) Job Identification Number: A unique number assigned to a job by DHRM.

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

(69) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(70) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

(71) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward performance.

(72) Misfeasance: Performance of a lawful action in an illegal or improper manner.

(73) Nonfeasance: Omission or failure to do what ought to be done.

(74) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

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

(76) 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.

(77) 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.

(78) 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.

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

(80) Position: An employee's unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(81) Position management Report: A document that lists an agency's authorized positions including job identification numbers,

salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(82) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Salary, retirement service credits and leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

(83) 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.

(84) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from FTE reductions and agency base budget reduction.

(85) Promotion: A management initiated action moving an employee from a position in one job to a position in another [class]job having a higher maximum salary [range of at least two salary] step[s].

(86) Reappointment: Return to work of an employee from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

(87) Reappointment Register: A register of career service employees who have been separated in a reduction in force because of inadequate funds, change of workload or lack of work. It also includes career service employees who accepted exempt positions without a break in service and who were not retained, unless discharged for cause, and those employees who by the Career Service Review Board's decision are placed on the reappointment register.

(88) Reasonable Suspicion: Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

(89) Reclassification: A DHRM approved reallocation of a position from one job to another job to reflect management initiated changes in duties and responsibilities as determined through a DHRM classification review.

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

(91) Reemployment: Return to work of an employee who terminated state employment to join the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at termination.

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

(93) Reprisal: An act of management retaliation taken against an employee.

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

(95) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

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

(97) RIF'd Employee: An employee who is placed on the reappointment register as a result of a reduction in force.

(98) Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

- (a) directly related to law enforcement; or
- (b) involving direct access or having control over direct access to controlled substance; or
- (c) directly impacting the safety or welfare of the general public.

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

(100) 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).

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

- (a) In-patient care in a hospital, hospice, or residential medical care facility;
- (b) Continuing treatment by a health care provider.

(102) Sexual Harassment:

(a) Any behavior or conduct of a sexual nature which is [severe]unwelcome and pervasive, [unwelcome,]demeaning, ridiculing, derisive or coercive and results in a hostile, abusive or intimidating work environment.

(i) Level One: sex role stereotyping

(ii) Level Two: targeted gender harassment/discrimination

(iii) Level Three: targeted or individual harassment

(iv) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

(b) Any quid pro quo behavior which offers job advancement, enhancement or other tangible job benefits in return for sexual favors.

(103) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

(104) Transfer: Voluntary assignment of an employee within an agency or between agencies from one position to another position with the same maximum salary step and for which the employee qualifies, including a change of work location or organizational unit.

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

(106) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, or any other category of persons designated by the President in time of war or emergency. Service in Uniformed

Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from work for an examination to determine fitness for any of the above types of duty.

(107) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who left state employment to enter the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

(108) Utah Skill Match: Utah Skill Match is the state's recruitment and selection system, which includes:

- (a) continuous recruitment of all positions;
- (b) a centralized and automated computer database of resumes and related information administered by the Department of Human Resource Management;
- (c) decentralized access to the database based on delegation agreements.

(109) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(110) Voluntary Reassignment: Employee initiated movement from a position in one job to a position in another job having a lower maximum salary[~~range of at least two salary~~] step[s].

(111) 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.

(112) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

**KEY: personnel management, rules and procedures, definitions\***

**[June 27,]1998**

**67-19-6**

**Notice of Continuation July 1, 1997**



**Human Resource Management,  
Administration  
R477-5  
Filling Positions**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 21304  
FILED: 07/17/1998, 10:59  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify wording in the rule regarding transfers of employees that require a change in work location and time limits for temporary employees. No changes are made to the content of the rules.

SUMMARY OF THE RULE OR CHANGE: In Section R477-5-7, "Involuntary Reassignment," the rule is amended to make it more clear that an agency cannot require an employee to commute fifty miles beyond his current commute without meeting certain conditions. In Section R477-5-12, "Time-Limited Exempt Positions," the time limits for certain temporary employees are converted from months and days to hours. This will make it easier for agencies to apply the rule in individual cases where there is an extensive use of flexible working schedules by agencies.

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

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--there is no substantive change other than language.

❖LOCAL GOVERNMENTS: None--this change only affects state government.

❖OTHER PERSONS: None--this change only affects state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. There may be a very slight, indirect effect if there is a cost incurred by an agency and if that agency passes these on to businesses with increases in fees. This rule change will not increase agency costs and will thus have no effect on businesses.

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

Human Resource Management  
Administration  
2120 State Office Building  
PO Box 141531  
Salt Lake City, UT 84114-1531, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.  
R477-5. Filling Positions.**

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**R477-5-7. Involuntary Reassignment.**

(1) Positions may be filled by involuntarily reassigning staff without a reduction in pay within the agency or across agencies with approval of the respective agency heads for administrative reasons such as budget constraints, corrective action pursuant to R477-10-2, or the need to move persons to positions that better utilize their skills.

(2) ~~[However, i]nvoluntary [transfers]reassignments which involve a change in work location shall not be permitted if [the involuntary reassignment]this requires the employee to commute or relocate [beyond a 50 mile radius]50 miles or more, one way, beyond his current one way commute, unless:~~

(a) The policy is communicated to the employee at employment;

(b) The agency will either pay to move the employee consistent with R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-04.03, or reimburse commuting expenses up to the cost of a move.

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**R477-5-12. Time-Limited Exempt Positions.**

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

(1) Time-limited, temporary or seasonal non-career appointments, such as schedules AJ, AL and TE, may be made without competitive examination, provided job requirements are met.

(a) The following appointments are temporary, and may not receive benefits:

(i) AJ appointments for positions which are half-time or more shall last no longer than ~~[nine months]1560 working hours~~ in any 12 consecutive month period.

(ii) TE appointments shall last no longer than ~~[90 working days]520 working hours~~ in the same ~~[position]assignment~~.

(b) Appointments under schedules AE, AI and AL shall be non-career positions. AE employees shall receive benefits. AI and AL employees may receive benefits on a negotiable basis.

(i) Schedule AL appointments shall work on time-limited projects for a maximum of two years or on projects with time limited funding.

(ii) Only schedule A appointments made from a hiring list as prescribed by R477-5-11.(1) may be considered for conversion to career service.

(2) Appointments to fill an employee's position who is on approved leave-without-pay shall only be made temporarily. A notice of appointment shall be signed by the parties.

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**KEY: employment, fair employment practices, hiring practices**  
**[June 27,]1998 67-19-6**  
**Notice of Continuation July 1, 1997**



**Human Resource Management,  
Administration  
R477-7  
Compensation**

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE NO.: 21305  
FILED: 07/17/1998, 10:59  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is intended to clear up a misunderstanding in interpretation of the rule.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-7-4(6), "Voluntary Reassignment," the amended wording makes it more clear that agencies do not have flexibility in the number of steps taken from an employee when the employee voluntarily moves to a position with a lower salary range. This is consistent with Section 67-19-15.7.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-15.7

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None--there is no affect on agency operating procedures.
  - ❖LOCAL GOVERNMENTS: None--rule only affects state government.
  - ❖OTHER PERSONS: None--rule only effects state government.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules

only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. There may be a very slight, indirect effect if there is a cost incurred by an agency and if that agency passes these on to businesses with increases in fees. This rule change will not increase agency costs and will thus have no effect on businesses.

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2120 State Office Building  
PO Box 141531  
Salt Lake City, UT 84114-1531, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.  
R477-7. Compensation.**

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**R477-7-4. Salary.**

(1) Merit increases - The following are applicable if merits are authorized and funded by the legislature:

(a) Employees who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a maximum merit increase of one salary step on the first pay period in July.

(b) Employees designated as schedule AJ are not eligible for a salary step increase. Merit increases for employees in schedule AL, AM, or AS are not mandatory unless they are receiving benefits, and the increase is approved in agency policy.

(2) Highest Level Performer

(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10(2) shall receive, as determined by the agency head, either:

- (i) a salary step increase, or;
- (ii) a bonus; or
- (iii) administrative leave; or
- (iv) other appropriate recognition as determined by the agency.

(b) Employees on a longevity step are not eligible for a salary step increase but may receive a bonus, administrative leave or other appropriate recognition as determined by the agency.

(3) Promotions and Reclassifications

(a) Employees promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by two or three salary steps shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. Employees who are promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by four salary steps or more shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps. Employees may not be placed higher than the highest salary step or lower than the beginning salary step in the new salary range.

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

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

(ii) have received a successful or higher performance rating within the 12 month period preceding the promotion;

(iii) not be currently in a period of constant review;

(iv) have successfully completed a period of constant review during the past twelve months, if applicable.

(c) Employees who have their positions reclassified to a job with a lower salary range shall retain their current salary unless this salary exceeds the maximum of the new salary range. In this case, longevity rule R477-7-4(d) is in effect.

(4) Longevity

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

(i) They have been in state service for eight years or more. They may accrue years of service in more than one agency, and such service is not required to be continuous.

(ii) They have been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(b) Employees on a longevity step shall be eligible for the same across-the-board pay plan adjustments authorized for all other employee pay plans.

(c) Employees on a longevity step shall only be eligible for additional step increases every three years. To be eligible, employees must receive a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(d) Employees on a longevity step who are involuntarily reassigned or reclassified to a lower salary range, shall retain their salary.

(e) Employees on a longevity step who are promoted or reclassified to a higher salary range shall only receive an increase if their current salary step is less than the highest salary step of their new range.

(f) Agency heads or time-limited exempt employees identified in R477-5-12 are not eligible for the longevity program.

(5) Administrative Adjustment

(a) Employees who have had their position allocated by DHRM from one job to another job or salary range for administrative purposes, shall not receive an adjustment in salary.

(6) Voluntary Reassignment

(a) Employees who voluntarily accept a position with a salary range maximum [~~two or~~one to three salary steps lower than their current position shall be placed at the salary step within the new salary range corresponding to a salary decrease of [~~at least~~] one salary step.

(b) Employees who voluntarily accept a position with a salary range maximum four salary steps or more lower than their current salary range, shall be placed at the salary step within the new salary range corresponding to a salary decrease of [~~at least~~] two salary steps.

(c) Employees who voluntarily accept a position in a lower salary range, shall not receive a new salary lower than the lowest salary step, or higher than the highest salary step of the new salary range.

(7) Transfer

Employees who transfer from one position to another position with the same salary range may not be offered salary increases effective the same date as the transfer.

(8) Demotions

Employees demoted consistent with R477-11-2 shall receive a salary reduction of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the salary reduction.

(9) Payroll actions

Payroll actions shall be effective on the first day of a payroll period closest to the salary action, with the exception of new hires, rehires, and terminations.

(10) Productivity step adjustment

Agency management may establish policies to reward employees who assume additional workloads that eliminate a position for at least one year with a salary increase of up to four salary steps. Employees at the top salary step of their salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

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

(i) Either the employees or management can make the suggestion;

(ii) Employees and management agree;

(iii) The agency head approves;

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

(v) The agency human resource representative approves;

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

(vii) Staff receives additional duties which are substantially above a normal full workload;

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

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

(11) Administrative Salary Increase

The executive director or commissioner authorizes and approves Administrative Salary increases under the following parameters:

(a) Employees shall receive one or more steps up to the maximum of their salary range.

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

(c) Justifications for Administrative Salary Increases shall be --

(i) In writing;

(ii) Approved by the executive director or commissioner;

(iii) Supported by issues such as: special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(d) The executive director or commissioner is the final authority for salary actions authorized within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an Administrative Salary Increase.

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

(12) Administrative Salary Decrease

The executive director or commissioner authorizes and approves administrative salary decreases for non-disciplinary reasons according to the following:

(a) Employees shall receive a one or more step decrease not to exceed the minimum of their salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the executive director or commissioner;

(iii) supported by issues such as; previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(c) The executive director or commissioner is the final authority for salary actions within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

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**KEY: salaries, employee benefit plans\*, insurance, personnel management**

**[June 27,]1998**

**67-19-6**

**Notice of Continuation July 1, 1997**



Human Resource Management,  
Administration

**R477-8**

Working Conditions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21306

FILED: 07/17/1998, 10:59

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To formalize an emergency rule, R477-8, filed by The Department of Human Resource Management (DHRM) on July 1, 1998, regarding S.B. 138 and to clarify the rule on accrual of annual leave.

**(DAR Note:** The 120-Day (Emergency) Rule on R477-8 is effective as of July 1, 1998. It was published in the July 15, 1998, issue of the *Utah State Bulletin* under DAR No. 21264.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-8-7(3), "Annual Leave," the amendment establishes a date after which all hired employees can count previous state service for the accrual of annual leave. In Subsection R477-8-7(6), "Early Retirement Incentive," this amendment extends the benefits of S.B. 138 to all retiring employees.

**(DAR Note:** S.B. 138 is found at 1998 Utah Laws 338 and was effective July 1, 1998.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-14

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Agencies will be affected by this change through the labor additive pool maintained in the Division of Finance. This pool of money is a self-funding device for the payment of leave benefits to retiring employees. Each year the Division of Finance sets rates for agencies to cover the anticipated costs. The fiscal impact of S.B. 138 was set at \$403,000 by the legislature but the Department of Human Resource Management (DHRM) estimates that the actual cost could be closer to \$600,000.

❖LOCAL GOVERNMENTS: None--this rule only affects state government.

❖OTHER PERSONS: None--this rule only affects state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the

DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. There may be a very slight, indirect effect when there is a cost incurred by an agency and if that agency passes these on to businesses with increases in fees. This rule change has the potential to increase agency costs, but this is hard to gauge because it is almost impossible to estimate how many employees will retire within the next year. DHRM, the Division of Finance, and the Governor's Office of Planning and Budget will have a better understanding of the real impact after the rule had been in effect for 12 months.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Human Resource Management  
Administration  
2120 State Office Building  
PO Box 141531  
Salt Lake City, UT 84114-1531, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.**  
**R477-8. Working Conditions.**

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**R477-8-7. Leave.**

All employees who regularly work 40 hours or more per pay period, except Schedule AJ or other temporary workers, are eligible for leave benefits. Employees receive leave benefits in proportion to the number of hours they are scheduled to work. Employees shall use leave in no less than quarter hour increments.

- (1) Holiday Leave
  - (a) The following dates are designated legal holidays:
    - (i) New Years Day -- January 1
    - (ii) Human Rights Day -- third Monday of January
    - (iii) Presidents' Day -- third Monday of February
    - (iv) Memorial Day -- last Monday of May
    - (v) Independence Day -- July 4
    - (vi) Pioneer Day -- July 24
    - (vii) Labor Day -- first Monday of September

- (viii) Columbus Day -- second Monday of October
- (ix) Veterans' Day -- November 11
- (x) Thanksgiving Day -- fourth Thursday of November
- (xi) Christmas Day -- December 25
- (xii) The Governor may also designate any other day a legal holiday.

(b) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(c) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall receive compensation for the excess hours worked.

(d) The following employees are eligible to receive holiday leave:

- (i) Full-time employees shall accrue eight hours of paid holiday leave on holidays;
- (ii) Part-time career service employees and partners in a job-shared position who work 40 hours or more per pay period shall receive holiday leave in proportion to the hours they normally work in a pay period;
- (iii) Employees working flex-time, as defined in R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, flex-time employees shall receive an equivalent work day off, not to exceed eight hours or shall receive compensation for the excess hours at a later date.

(e) In order to receive paid holiday leave, an employee must be in a paid status for a full scheduled work day before and after a holiday.

(2) Conditions of leave

(a) Eligible employees who work 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time worked. They shall also receive funeral, holiday, and paid military leave in proportion to the time worked. Employees excluded from these are "at will" employees identified in R477-5-12.

(b) Seasonal, temporary, or part-time employees working less than 40 hours per pay period are not eligible for paid leave.

(c) Accrual rates for sick and annual leave are determined in proportion to the time worked, as outlined on the Annual and Sick Leave Accrual table available through DHRM.

(d) No employee may receive annual, sick or holiday leave before he has accrued it.

(e) Employees transferring from one agency of State service to another are entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(f) Employees on paid leave shall continue to accrue annual and sick leave.

(g) Employees terminating or retiring from State service shall be cashed out in a lump sum for all annual leave and converted sick leave effective through the last day actually worked. Leave cannot be accrued after the last day worked. No leave-on-leave may accrue or be paid on the cashed out annual leave.

(h) No contributions to benefits may be paid on cashed out leave, other than FICA tax, except as it applies to the Early Retirement Incentive Program outlined in R477-8-(7)-(5)(b).

(3) Annual Leave

(a) Employees eligible for annual leave shall accrue leave based on the following years of State service:



(i) Zero through five years -- four hours per pay period.  
 (ii) Beginning of sixth year through ten years -- five hours per pay period.

(iii) Beginning of eleventh year or more -- six hours per pay period.

(b) ~~[To determine the]~~The accrual rate[-] for employees hired on or after July 1, 1995 shall be based on all State employment ~~[shall be counted]~~ in which ~~[an]~~the employee was eligible to accrue leave ~~[regardless of whether the employment was continuous or not]~~.

(c) Eligible employees may begin to use annual leave time after completing the equivalent of two full pay periods of employment.

(d) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year. However, annual leave granted shall be approved in advance by management.

(e) Any unused accrued annual leave time in excess of 320 hours shall be forfeited at the beginning of the first full pay period of each calendar year.

(f) Department deputy directors and division directors appointed to career service exempt status positions shall be eligible for the maximum annual leave accrual rate upon their date of hire but shall not be eligible for any transfer of leave from other jurisdictions. Annual leave shall accrue at six hours per pay period for the tenure of employment in exempt positions. Other provisions of leave shall apply as defined in R477-8-7(3).

(4) Sick Leave

(a) Employees shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(b) Employees may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(c) Sick leave shall be granted for preventive health and dental care, maternity/paternity and adoption care, or for absence from duty because of illness, injury or temporary disability of a spouse or dependents living in the employee's home. Exceptions may be granted for other unique medical situations.

(d) Employees shall arrange for a telephone report to supervisors at the beginning of the scheduled work day they are absent because of illness or injury. Management may require reports for serious illnesses or injuries.

(e) Any application for a grant of sick leave to cover an absence which exceeds four successive working days shall be supported by administratively acceptable evidence such as a medical certificate. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce a doctor's certificate of illness regardless of the number of days on sick leave.

(f) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions: an approved leave-without-pay status, not to exceed 12 months, an approved Family Medical Leave Status, or in an annual or other accrued leave status.

(g) After filing a termination notice, employees must support sick leave requests with a doctor's certificate.

(h) Employees separating from State service may not receive compensation for accrued unused sick leave unless they are retiring. However, employees who are rehired within 12 months of

separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(i) Employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(ii) Employees who retire from state service and are then rehired may not reinstate their unused sick leave credit.

(5) Converted Sick Leave

As an incentive to reduce sick leave abuse, employees may convert a portion of unused sick leave to converted sick leave.

(a) To be eligible for converted sick leave, an employee must have an accumulated balance of 144 hours of unused sick leave at the end of the last pay period of the calendar year.

(i) Forty hours are eligible for conversion in a calendar year and will be converted to converted sick leave unless the employee designates otherwise.

(ii) The number of hours used in a calendar year shall be deducted from the 40 hours eligible for conversion.

(iii) The maximum hours of converted sick leave an employee may accrue is 320.

(b) Converted sick leave may be used as annual leave, regular sick leave, or as paid-up health and life insurance at the time of retirement for employees under age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a medicare supplement.

(i) Payment for health and life insurance is the responsibility of the employing agency.

(ii) Eight hours of converted sick leave equals the amount of the premium for one month's coverage for health and life insurance.

(6) Early Retirement Incentive

Employees may be offered an early retirement incentive program, according to Section 67-19-14(2).

(a) This program is optional for each department. However, any decision whether or not to participate shall be agency-wide and shall be consistent through an entire fiscal year.

(b) If an agency decides to withdraw for the next fiscal year after initially deciding to participate in early retirement, the agency must notify all employees at least 60 days before the new fiscal year begins.

(c) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(d) ~~[The early retirement incentive for employees who retire prior to age 60, shall consist of any or all of the following:]~~Employees retiring from state service shall have the following options with their accrued unused sick leave.

(i) ~~[An option to receive a]~~A cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.

(ii) The use of any sick leave balance, after the subtraction of 25% for the cash out and a standard deduction of 480 hours, to purchase additional health and life insurance coverage and medicare supplement.

(A) The purchase rate shall be 8 hours of sick leave for each month of coverage for each person covered.

(iii) The employing department shall provide health and life insurance coverage for five years or until the employee reaches the age eligible for medicare, whichever is less.

(A) Health coverage shall be the same as 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.

(B) Life insurance provided shall be the basic \$18,000 coverage provided for all State employees.

~~[(C) Health and life insurance coverage will end after five years, unless the employee has sick leave in excess of 480 hours after any cash out. Eight hours of sick leave in excess of 480 after any cash out shall provide one additional month of paid health and life insurance coverage up to the age eligible for medicare.]~~

~~(iv) [When the employee becomes eligible for medicare, the] The purchase of health and life insurance coverage for a spouse until the spouse is eligible for medicare [at the rate of one month of coverage for 8 hours of unused sick leave after any cash out and the 480 hour deduction].~~

~~(v) The purchase of low option medicare supplement for the employee [and a spouse at the rate of one month of coverage for 8 hours of unused sick leave for the employee and one month of coverage for 8 hours of unused sick leave for the spouse].~~

~~(vi) The purchase of low option medicare supplement for the spouse.~~

~~[(e) The early retirement incentive for employees who retire after age 60 but prior to becoming eligible for medicare shall consist of:~~

~~— (i) An option to receive a cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.~~

~~— (ii) The employing department shall provide health and life insurance coverage for five years or until the age when the employee is eligible for medicare, whichever comes first.~~

~~— (A) Health coverage shall be the same as currently carried by the employee, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.~~

~~— (B) Life insurance provided shall be the basic \$18,000 coverage provided for all state employees.~~

~~— (f) Employees who retire and are eligible for medicare may receive a cash payment for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.]~~

(7) Workers Compensation Leave

(a) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(i) The combination of leave benefit and workers compensation benefit shall not exceed the employees gross salary.

(ii) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(A) the employee is declared medically stable by licensed medical authority; or

(B) the workers compensation fund terminates the benefit; or

(C) the employee has been absent from work for one year; or

(D) the employee refuses to accept appropriate employment offered by the state; or

(E) the employee receives Long Term Disability or Social Security Disability benefits.

(iii) The employee shall refund to the state any accrued leave paid which exceeds the employees gross salary for the period for which the benefit was received.

(b) Employees will continue to accrue state paid benefits while receiving a workers compensation time loss benefit for up to one year.

(c) Employees who file fraudulent workers compensation claims shall be disciplined according to the provisions of R477-11.

(8) Funeral Leave

Employees may receive a maximum of three days funeral leave per occurrence with pay at management's discretion to attend the funeral of a member of the immediate family. Funeral leave may not be charged against accrued sick or annual leave. One day of funeral leave is the equivalent of 8 hours.

(a) The "immediate family" means-- wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, spouse's grandparents, step-children, and step-parents, brothers and sisters of the employee.

(9) Military Leave

One day of military leave is the equivalent of 8 hours.

(a) Employees who are members of the National Guard or Military Reserves are entitled to military leave not to exceed fifteen days per year without loss of pay, annual leave or sick leave. Employees shall be on official military orders and may not claim salary for non-working days spent in military training or for traditional weekend training.

(b) Officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.

(c) Employees are required to give notice of active military service as soon as they are notified.

(d) Upon termination from active military service, under honorable conditions, employees shall be placed in their original position or one of like seniority, status and pay. The cumulative length of time allowed for re-employment may not exceed five years. Employees are entitled to re-employment rights and benefits including increased pension and leave accrual. Persons entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, employees shall present evidence of military service and leave without pay status, and:

(i) For service less than thirty-one days, return at the beginning of the next regularly scheduled work period on the first full day after release from service taking into account safe travel home plus an eight-hour rest period, or:

(ii) For service of more than thirty-one days but less than 181 days, submit an application for reemployment within fourteen days of release from service, or

(iii) For service of more than 180 days, submit an application for reemployment within ninety days of release from service.

(10) Leave of Absence Without Pay

Employees may be granted continuous leave of absence without pay for up to 12 months. Employees shall apply in writing to agency management for approval. If absence is due to FMLA, workers compensation or long-term disability, R477-8-9 or R477-8-7(7) applies.

(a) Medical leave without pay may be granted for no more than twelve months. Medical leave may be approved if a registered

health practitioner certifies that an employee is temporarily disabled.

(b) Agency management may approve leave without pay for employees even though annual or sick leave balances exist. Employees may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(i) Employees who receive no compensation for a complete pay period shall be responsible for payment of state provided benefit premiums, unless they are covered by the provisions under the federal Family and Medical Leave Act, in R477-8-9.

(c) Employees who return to work on or before the expiration of leave without pay, shall be placed in a position with comparable pay and seniority to their previously held position, provided the same or comparable level of duties can be performed with or without reasonable accommodation. The employee shall also be entitled to previously accrued annual and sick leave.

(d) Leave without pay for non-disability reasons may be granted only when there is an expectation that the employee will return to work.

(e) Health insurance benefits shall continue for employees on leave without pay because of work-related injuries or illnesses. Except as provided under the family and medical leave provisions, employees on leave without pay must personally continue the premiums to receive health insurance benefits.

(f) Employees who are determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(i) The one year medical leave begins on the last day the employee worked due to the disability. During this period and until LTD benefits begin, employees shall use sick and converted sick leave. Annual leave may be used after the employee uses all available sick and converted sick leave.

(ii) If the employee is unable to return to work and has not used all available annual leave, he shall be paid for the annual leave when the termination action is processed.

(iii) Employees determined eligible for Long Term Disability benefits, after a three month waiting period, will be eligible for health insurance benefits beginning two months after the last day worked. The health insurance benefit will continue for up to twenty-two months or until they are eligible for medicare/ medicaid, whichever occurs first.

(iv) Conditions for return from leave without pay shall include:

(A) If an employee is able to return to normal duties within one year of the last day worked, the agency shall place the employee in his previously held position or similar position in a comparable salary range.

(B) If an employee is unable to perform the essential functions of the job because of a permanent disability, the obligation to place the employee in the same position shall be set aside. The employing unit shall place the employee in the best available, vacant position for which he is qualified, if able to perform the job with or without reasonable accommodation. If the employing unit does not have an available position, the agency shall then attempt to place the individual. The new position shall be consistent with the employee's qualifications and capabilities.

(I) For the first year, every effort shall be made to find a position as close to the salary range and function as the original position.

(II) The agency Executive Director may extend the timeline for return to work beyond one year if the employee's injury resulted in disability prohibiting the employee from performing the essential functions of the job, as defined by ADA.

(11) Jury Leave

(a) Employees are entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, they are required to:

(i) Appear as a witness as part of their position for the federal government, the State of Utah, or a political subdivision of the state, or

(ii) Serve as a witness in a grievance hearing.

(iii) Serve on a jury

(b) Employees choosing to use annual leave while on jury duty shall be entitled to keep jurors fees; otherwise, jurors fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

(c) Employees who are absent in order to litigate in matters unrelated to their position shall take leave as annual or as leave without pay.

(12) Administrative Leave

(a) Administrative leave may be granted consistent with agency policy for the following reasons:

(i) corrective action;

(ii) personal decision-making prior to discipline;

(iii) suspension with pay-- during removal from job site-- pending hearing on charges;

(iv) during management decision situations that benefit the organization;

(v) incentive awards in lieu of cash;

(vi) when no work is available due to unavoidable conditions or influences;

(vii) removal from adverse or hostile work environment situations pending management corrective action;

(viii) educational assistance;

(ix) employee assistance and fitness for duty evaluations.

(b) Agency head or designee may grant paid administrative leave for no more than ten consecutive working days per occurrence. Other conditions of administrative leave are:

(i) Administrative leave in excess of 10 consecutive working days per occurrence may be granted by written approval of the agency head.

(ii) Administrative leave taken must be documented in the employee's leave record.

(13) Disaster Relief Volunteer Leave

(a) An employee may be granted an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer; and file a written request with the employing agency. The request shall include:

(i) a copy of a written request for the employee's services from an official of the American Red Cross;

(ii) the anticipated duration of the absence;

(iii) the type of service the employee is to provide for the American Red Cross; and

(iv) the nature and location of the disaster where the employee's services will be provided.

(14) Furlough

(a) Agency management may furlough employees as a means of saving salary costs in lieu of reduction in force. See R477-12-3(3). Furlough plans are subject to the approval of the Executive Director, DHRM and the following conditions:

- (i) Employees accrue annual and sick leave.
- (ii) Full payment of all fringe benefits continue at agency's expense.
- (iii) Employees shall return to their positions.
- (iv) Furlough is applied equitably, e.g., to all persons in a given class, all program staff, or all staff in an organization.

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**KEY: compensatory time, disability insurance, leave, vacations**  
~~June 27,~~ 1998 **67-19-6**  
**Notice of Continuation July 1, 1997**



**Human Resource Management,  
Administration  
R477-12  
Separations**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 21307  
FILED: 07/17/1998, 10:59  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is a clarification of a very technical issue involving the formal notification to an employee that he is affected by a reduction in force.

SUMMARY OF THE RULE OR CHANGE: In Section R477-12-3, "Reduction in Force," changes in two subparagraphs make it clear that a formal notification is to be written. This makes it more clear that informal discussions with employees on the potential effects of a reduction in force do not satisfy the formal requirements of the rule. It also allows agencies to engage in informal discussions without violating the rule.

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

ANTICIPATED COST OR SAVINGS TO:  
❖THE STATE BUDGET: None--this will have a minimal impact on agency operating procedures.  
❖LOCAL GOVERNMENTS: None--this rule only affects state government.  
❖OTHER PERSONS: None--this rule only affects state government.  
COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. There may be a very slight, indirect effect, if there is a cost incurred by an agency and if that agency passes these on to businesses with increases in fees. This rule change will not increase agency costs and will thus have no effect on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
Human Resource Management  
Administration  
2120 State Office Building  
PO Box 141531  
Salt Lake City, UT 84114-1531, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.  
R477-12. Separations.**

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**R477-12-3. Reduction in Force.**

Reductions in force shall be required by inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by the following rules:

(1) When staff will be reduced in one or more classes, agency management shall develop a work force adjustment plan (WFAP). Career service employees shall only be ~~notified of being reduced in force~~ given formal written notification of separation after a WFAP has been reviewed and approved by the Executive Director, DHRM. The following items shall be considered in developing the work force adjustment plan:

- (a) The categories of work to be eliminated, including positions impacted through bumping, as determined by management.
- (b) A decision by agency management allowing or disallowing bumping.

(c) Specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, voluntary or involuntary reassignment, voluntary relocation, and movement to vacant positions based on interchangeability of skills.

(d) A list of all affected employees showing the retention points for each employee.

(e) Furlough

(i) After all other cost saving methods have been exhausted, furlough may be implemented before a reduction in force.

(ii) The provisions of 8-7-(13) may be implemented prior to a reduction in force if the furlough results in the necessary cost savings and is consistent with reasons of business necessity.

(iii) A reduction in force shall be the last, unavoidable action taken for cost savings.

(2) Eligibility for RIF

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) Employees covered by USERRA and in a leave without pay status must be identified, assigned retention points and notified of the RIF of their previous position in the same manner as career service employees.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency/department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) All affected employees including employees covered under USERRA in a leave without pay status within a category of work shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in R477-10-1.(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of the all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for employees covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under

USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) Non-career service employees

(b) Probationary employees

(c) Career service employees in the order of their retention points when the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) Employees, including those covered under USERRA in a leave without pay status, who are separated due to a reduction in force shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) Appeals

(a) An employee separated due to a reduction in force may appeal to the agency head for an administrative review. Employees must submit notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

(7) Reappointment of RIF'd employee

(a) A RIF'd employee is eligible for reappointment into a career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. See R477-5-4 for selection of employees from the reappointment register. RIF'd employees shall remain on the state reappointment register for twelve months, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each department's FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility or bumping eligibility, a comparison of the previous to the new salary range maximum step is required. The previous salary range shall be considered comparable if the maximum step is equal to or greater than the maximum step of the new salary range.

(d) A RIF'd employee who is reappointed to a state position shall not be required to serve a probationary period. The employee shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, employees reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd employee – An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) Career service employees in exempt positions – Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these regulations, shall:

(a) Be placed on a reappointment register for one year from the date of separation and shall be reappointed to any career service position for which the employee qualifies in a pay range comparable to the employee's last position in the career service, provided an opening exists; or

(b) Be reappointed to any lesser career service position for which the employee qualifies pending the opening of a position at the last career service salary range held. The Executive Director, DHRM, shall maintain a reappointment register for this purpose, and shall make the final determination on whether an eligible RIF meets the job requirements for position vacancies.

(c) If the employee has not been reappointed as outlined, his placement on the reappointment register shall be renewed on a yearly basis upon his written request.

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**KEY: administrative procedure, employees' rights, grievances, retirement**  
~~June 27,~~1998 **67-19-6**  
Notice of Continuation July 1, 1997



Human Resource Management,  
Administration  
**R477-14**  
Substance Abuse and Drug-Free  
Workplace

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 21308  
FILED: 07/17/1998, 10:59  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify agency responsibility to conduct random drug and alcohol testing for their employees in safety sensitive positions.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-14-1(4), the word "may" is changed to "shall."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-34, and 67-19-36

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There may be an increase in cost for those agencies who have not been conducting random drug testing. This is not a serious problem, and the effect is expected to be minimal.

❖LOCAL GOVERNMENTS: None--this rule only affects state government.

❖OTHER PERSONS: None--this rule only affects state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. There may be a very slight, indirect effect if there is a cost incurred by an agency and if that agency passes these on to businesses with increases in fees. This rule change will not increase agency costs and will thus have no effect on businesses.

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Administration  
2120 State Office Building  
PO Box 141531  
Salt Lake City, UT 84114-1531, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

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THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.**  
**R477-14. Substance Abuse and Drug-Free Workplace.**  
**R477-14-1. Rules Governing a Drug-Free Workplace.**

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportational Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees shall be prohibited from unlawfully manufacturing, dispensing, possessing, distributing or using any controlled substance or alcohol during working hours, on state property or while operating a state vehicle at any time or other vehicle while on duty except where legally permissible.

(a) Employees shall follow R477-14-(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) When, during work hours, there is reasonable suspicion that an employee is using or is impaired through the use of a controlled substance or alcohol unlawfully, an employee may be required to submit to medically accepted testing procedures to determine whether the employee is using a controlled substance or alcohol in violation of federal or state law.

(a) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(b) Drug and alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(c) Management may take corrective or disciplinary action if:

(i) There is a positive confirmation test for illegal drugs;

(ii) An alcohol test result shows .08 percent body fluid content or more.

(iii) Management determines there is impairment, even when an alcohol test shows less than .08 percent body fluid content.

(4) Employees in safety sensitive positions, as approved by DHRM, are subject to drug or alcohol testing without justification of reasonable suspicion or critical incident. Random drug testing of employees in safety sensitive positions ~~may~~ shall be conducted by ~~an~~ the employing agency ~~if~~ as authorized by the Executive Director in DHRM.

(a) Employees in safety sensitive positions whose alcohol test results are .02 or greater, when tested before, during, or immediately after performing safety sensitive functions, must be removed from performing safety sensitive duties for 8 hours, or until another test is administered and the result is less than .02.

(b) Employees in safety sensitive positions whose alcohol test results are .04 or greater when tested before, during or after performing safety sensitive duties, may be subject to corrective action or discipline.

(5) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.

(6) The agency's Human Resource 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.

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**KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees**  
~~[July 2, 1996]~~1998 67-19-34  
Notice of Continuation December 27, 1996



# Human Resource Management, Administration **R477-15** Sexual Harassment Policy and Procedure

## NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21309

FILED: 07/17/1998, 10:59

RECEIVED BY: NL

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To eliminate an internal inconsistency in the rule regarding state policy on sexual harassment.

SUMMARY OF THE RULE OR CHANGE: In Section R477-15-2, "Policy," this amendment is a technical and legal change which is needed to clarify state policy more precisely following a hearing before the Career Service Review Board (Dixon v. Department of Natural Resources, Case No. 6CSRB55). DHRM is making corresponding changes to Subsection R477-1-1(102).

**(DAR Note:** The proposed amendment to R477-1 is under DAR No. 21303 in this *Bulletin*.)

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

#### ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--this will have no effect on agency operating procedures.

❖LOCAL GOVERNMENTS: None--this rule only affects state government.

❖OTHER PERSONS: None--this rule only affects state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. There may be a very slight, indirect effect if there is a cost incurred by an agency and if that agency passes these on to businesses with increases in fees. This rule change will not increase agency costs and will thus have no effect on businesses.

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Human Resource Management Administration 2120 State Office Building PO Box 141531 Salt Lake City, UT 84114-1531, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Conroy R. Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration. R477-15. Sexual Harassment Policy and Procedure.

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R477-15-2. Policy.

It is the policy of DHRM that:

(1) discrimination based on sexual harassment, subtle or otherwise, shall not be tolerated; violators shall be subject to disciplinary action including termination or referral for criminal prosecution;

(2) any behavior or conduct of a sexual nature which is unwelcome and pervasive, [unwelcome] demeaning, ridiculing, derisive, or coercive and results in a hostile, abusive or intimidating work environment constitutes sexual harassment and shall not be tolerated; violators shall be subject to disciplinary action including termination;

(3) any quid pro quo behavior which offers job advancement, enhancement or other tangible job benefits in return for sexual favors constitutes sexual harassment and shall be prohibited and subject to discipline and termination;

(4) consideration shall be given to the complainant's requests in the investigation and through either a preliminary review process or a formal investigation as the circumstances indicate. However, the agency head or Executive Director, DHRM, may take appropriate action under this policy where the agency or state's legal liability is at risk;

(5) sexual harassment complaints may be filed regardless of whether or not the behavior occurred on or off duty if it resulted in a hostile work environment;

(6) supervisors who knew or should have known that offensive sex based behavior was occurring on duty, or have been made aware of the behavior occurring off duty which resulted in a hostile work environment and did not take timely action to correct the situation shall be subject to disciplinary action;

(7) malicious or frivolous complaints of sexual harassment shall result in corrective or disciplinary action taken against the accuser;

(8) individuals affected by alleged sexual harassment may, but shall not be required to, confront the accused harasser before filing a complaint;

(9) the accused shall not contact the complainant regarding allegations of harassment once a complaint has been filed. However, contact could be made in a formal appeal situation.

.....

KEY: administrative procedures, hostile work environment\* [June 28, 1997]1998 67-19-6 Notice of Continuation July 1, 1997



Human Services, Child and Family Services R512-25 Child Protection Services Notification and Due Process

NOTICE OF PROPOSED RULE

(New)

DAR FILE No.: 21336

FILED: 07/29/1998, 17:24

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides procedures for the implementation of 42 U.S.C. 5106(a) for types of child abuse and neglect not included in Section 62A-4a-116.5. This rule establishes the requirements for adjudicative proceedings pertaining to individuals who have been substantiated for types of child abuse or neglect not specified in Section 62A-4a-116.5, and the individuals who disagree with the substantiated finding. This rule establishes the same criteria for adjudicative proceedings as that specified in Section 62A-4a-116.5, thus eliminating the need for duplicate adjudicative proceedings for individuals substantiated for multiple allegations of child abuse or neglect when the substantiated allegations are of types specified in Section 62A-4a-116.5 (which may affect licensure, employment, or adoption) and types not specified in Section 62A-4a-116.5.

SUMMARY OF THE RULE OR CHANGE: This rule establishes criteria for adjudicative proceedings for individuals who have been substantiated for types of child abuse or neglect not included in Section 62A-4a-116.5, and the individuals who disagree with the substantiated finding. The rule establishes a definition of substantiation, specifies requirements for the Notice of Agency Action, and incorporates the same legal standard and burden of proof in administrative proceedings as specified in Section 62A-4a-116.5.



**(DAR Note:** A corresponding 120-day (emergency) rule that is effective as of June 16, 1998, is under DAR No. 21226 in the July 15, 1998, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-106

FEDERAL REQUIREMENT FOR THIS RULE: 42 U.S.C. 5106(a)

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** It is estimated that this rule will prevent new costs to state government as follows: (1) \$62,500 that would have been required for duplicate hearings for persons who receive mandatory notifications of substantiations from 1988 through 1994, per Sections 62A-4a-116 and 62A-4a-116.5, and who have also been substantiated for other types of child abuse or neglect. Estimated cost savings were calculated based upon costs for Division staff (4 hours for a worker and supervisor) and for administrative hearing officers to prepare for and participate in administrative hearings, based upon a hearing rate of 10% response to notices in which multiple allegations occur (estimated at 19% of all substantiated notifications); (2) \$102,000 annually for ongoing notifications and resulting administrative hearings, utilizing the cost elements specified above.

❖**LOCAL GOVERNMENTS:** None--there is a remote possibility that individuals who request an administrative hearing may ask local government employees to give testimony (such as law enforcement officers or school teachers). It has been the experience of the agency in administrative hearings that this type of testimony is rare. Most evidence is presented by report.

❖**OTHER PERSONS:** None--following careful review of potential costs to the public, or businesses, the agency has not identified any other persons who incur costs or realize savings as a result of this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Costs for compliance with the existing process include costs of postage, costs for obtaining a copy of the case record (not a mandatory requirement for the individuals), costs to travel to the site of the administrative hearing, and costs for attorney representation (at the option of the affected individuals). This rule will potentially reduce costs to affected persons by eliminating the need to mail duplicate requests for administrative hearings and eliminating travel costs to attend a second hearing. In addition, if for individuals who utilize an attorney (which is optional), consolidating the adjudicative proceedings into one administrative hearing would reduce attorney fees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will not impact businesses because it pertains to types of child abuse or neglect which cannot be considered for licensure or employment purposes. Administrative hearings for types of child abuse and neglect which may affect businesses through licensure or employment are addressed in statute in Section 62A-4a-116.5.

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

Human Services  
Child and Family Services  
Room 225,  
Human Services Administration Building  
120 North 200 West  
Salt Lake City, UT 84103, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Zohreh Saunders at the above address, by phone at (801) 538-4623, by FAX at (801) 538-3993, or by Internet E-mail at [hsadmin1.zsaunders@email.state.ut.us](mailto:hsadmin1.zsaunders@email.state.ut.us).

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Ken Patterson, Director

**R512. Human Services, Child and Family Services.**

**R512-25. Child Protective Services Notification and Due Process.**

**R512-25-1. Scope.**

A. 42 USC Section 5106(a) requires the State to establish a mechanism by which individuals who disagree with an official finding of abuse or neglect can appeal such a finding. Sections 62A-4a-116 and 62A-4a-116.5 establish an appeal mechanism for only certain types of abuse or neglect. This rule establishes an appeal mechanism for all other types of abuse or neglect.

**R512-25-2. Definitions.**

A. Division. The Division of Child and Family Services within the Department of Human Services.

B. Substantiation. An official finding at the completion of an investigation that there is a reasonable basis to conclude that child abuse, neglect, or dependency occurred.

**R512-25-3. Notice of Agency Action.**

A. Upon the substantiation of a child protective services investigation for a type of child abuse or neglect not specified in Subsection 62A-4a-116(4), a Notice of Agency Action shall be sent to the substantiated perpetrator of child abuse, neglect, or dependency in accordance with Section 63-46b-3.

B. The Notice of Agency Action shall include the following information:

1. the facts that support the finding of substantiation;
2. that the substantiated finding shall not be accessible to the Office of Licensing within the Department of Human Services or to the Bureau of Health Facility Licensure within the Department of Health;
3. that the person has the right to request:
  - a. a copy of the substantiated report; and

b. an administrative hearing in which the finding may be challenged based upon a disputed issue of fact; and

4. that failure to request an administrative hearing within 30 days of the notice being received shall result in an unappealable finding of substantiation, unless the person can show good cause for why compliance with the 30-day requirement was virtually impossible or unreasonably burdensome.

**R512-25-4. Challenge of Substantiated Finding.**

A. A person may make a request to challenge a substantiated finding within 30 days of:

- 1. a notice being received under R512-25-3;
- 2. a finding by a court of competent jurisdiction based upon the same underlying facts that:
  - a. child abuse or neglect did not occur; or
  - b. the person was not responsible for the child abuse or neglect that did occur.
- 3. the dismissal of criminal charges or a verdict of not guilty based on the same underlying facts.

B. The 30-day requirement of R512-25-3 shall be extended for good cause shown that compliance was virtually impossible or unreasonably burdensome.

C. The Division may approve or deny a request to change the substantiation.

D. If the Division denies the request to change the substantiation or fails to act within 30 days after receiving a request submitted under R512-25-4, the Office of Administrative Hearings within the Department of Human Services shall hold an adjudicative proceeding pursuant to Section 63-46b.

**R512-25-5. Legal Standard and Burden of Proof.**

A. In an adjudicative proceeding held pursuant to R512-25-4(D), the Division shall prove by a preponderance of evidence that there is a reasonable basis to conclude that:

- 1. child abuse or neglect occurred;
- 2. the person was substantially responsible for the abuse or neglect that occurred.

B. The administrative hearing officer may make a determination based solely upon the statement of the child.

**R512-25-6. Denial of or Stay of Adjudicative Proceeding.**

A. A person may not make a request to challenge a substantiated finding under R512-25-4 if, at any time, a court of competent jurisdiction has made a determination based on the same underlying facts that:

- 1. the child abuse or neglect occurred; and
- 2. the person was substantially responsible for the abuse or neglect that occurred.

B. An adjudicative proceeding held pursuant to R512-25-4 may be stayed during the time a judicial action is pending.

**KEY: child welfare, child abuse**  
**1998**

**42 USC 5106(a)**  
**62A-4a-106**  
**62A-4a-116**  
**62A-4a-116.5**  
**63-46b-3**



Insurance, Administration  
**R590-120**  
Surety Bond Forms

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 21339  
FILED: 07/31/1998, 13:13  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to the passage of the bail bond bills, H.B. 124 and H.B. 376, that require the department to regulate and license bail bondsmen and bail bond insurance, it is necessary that this rule be revised to require the filing of certain bail bond forms with the department.

(DAR Note: H.B. 124 is found at 1998 Utah Laws 257, and was effective May 4, 1998. H.B. 376 is found at 1998 Utah Laws 293, and was effective May 4, 1998.)

SUMMARY OF THE RULE OR CHANGE: (1) In the new definition of "surety insurance," fidelity and bail bond insurance are being excluded; (2) instead of exempting surety forms from the regulations in all of Chapter 21 of the Insurance Code, the rule specifies the particular subsections that these forms are exempt from; and (3) surety forms used on a regular and systematic basis are now to be filed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: A very minor fiscal impact will be created when the bail bond companies file their bail bond forms with the department, which they have not done in the past. The department will receive \$15 when a company files their bail bond form and then \$15 when they make changes to it and have to file it again. At this point we do not know how many companies provide bail bond insurance. We suspect that it will be very few. Currently there are only 22 bail bond agencies in Utah. The impact to the general fund would only be around \$330 from bail bond filings. Fidelity companies already file the forms they use regularly with us so there will be very little or no impact there.

❖LOCAL GOVERNMENTS: The filing of insurance forms does not affect local government. The change in this rule will not affect their revenues or costs.

❖OTHER PERSONS: Fidelity companies are already filing the forms they use regularly with the department so there will be no fiscal impact here. Bail bond insurers have not filed their forms or policies before. Each filing will cost \$15. This is a one time payment until they change the policy form, at which time they will need to refile it with the department. It is also anticipated that because of the minor filing cost, that these costs will probably not be passed on to the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the department has not regulated bail bond forms in the past, we are unaware of the number of companies that provide them

for bail bondsmen. However, Utah has only 22 bail bond agencies. If each agency had a different insurer (which is not likely) then the total amount received by the department would be around \$330. Fidelity forms are already being filed. No change here.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: We should learn soon just how many bail bond insurers there are when the licensing process is completed. Not only will the agents have to be licensed, but the insurers will need to file appointment forms with the department for each of their agents. That is when we will have a better idea of who should be filing bail bond forms. At this point all we know is that the impact will be minimal on the state's general fund and the bail bond insurer, with little or no impact on the consumer.

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

Insurance Administration  
3110 State Office Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/16/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/18/1998

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**

**R590-120. Surety Bond Forms.**

**R590-120-1. Authority.**

This rule is promulgated~~[by the Commissioner of Insurance]~~ pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Utah Insurance Code, and Subsection 31A-21-101(5) which authorizes rules exempting classes of insurance contracts from any or all provisions of Chapter 21, Title 31A of the Utah Code.

**R590-120-2. Purpose and Scope.**

The purpose of this rule is to exempt certain surety bond forms from ~~[certain provisions of Chapter 21 of Title 31A]~~ the form filing requirements and other requirements of Chapter 21 and repeal the exemption for fidelity insurance forms contained in the former version of this rule.

This rule shall apply to all insurers transacting surety~~[and fidelity]~~ insurance in this state.

**R590-120-3. ~~[Definitions]~~Definition.**

For the purpose of this rule~~[the commissioner adopts the definitions as particularly stated in Section 31A-1-301.];~~

"Surety insurance" means a guarantee against loss or damage resulting from failure of principals to pay or perform their obligations to a creditor or other obligee. It does not include bail bond insurance or fidelity insurance.

**R590-120-4. Rules.**

~~[Only]~~(1) Surety insurance forms are exempt from the following provisions of Chapter 21~~[of Title 31A are applicable to policies, applications and certificates of surety and fidelity insurance. Subsections 31A-21-102(1), (3) and (4), Sections 31A-21-103, 31A-21-104, 31A-21-105, Subsections 31A-21-107(1) and (3), Sections 31A-21-108, 31A-21-302, Subsection 31A-21-304(3), Sections 31A-21-305, 31A-21-306, 31A-21-307, 31A-21-309, 31A-21-313 and 31A-21-314.]; Sections 31A-21-106, 31A-21-201, 31A-21-303, 31A-21-308 and 31A-21-312.~~

(2) Surety insurance forms which are developed by admitted insurers for regular and systematic use are subject to the form filing requirements of Section 31A-21-201.

.....

**KEY: insurance rule**

~~[1987]~~**1998**  
Notice of Continuation May 7, 1997

**31A-2-201**  
**31A-21-101**



Insurance, Administration  
**R590-125**  
Bail Bond Insurance Exemption

**NOTICE OF PROPOSED RULE**

(Repeal)  
DAR FILE No.: 21340  
FILED: 07/31/1998, 13:13  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to exempt bail bondsmen from the requirement of licensure through the Insurance Department. As a result of H.B. 124, "Bail Bond Agent Licensure," the Insurance Department is now required to license bail bondsmen. As a result of this contradiction in the law and our rule we are now repealing this rule.

**(DAR Note:** H.B. 124 is found at 1998 Utah Laws 257, and was effective May 4, 1998.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-1-103

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The act of repealing this rule will not create a cost or savings to the state budget. The state was not financially affected by the rule when it went into effect. Repealing this rule merely eliminates a conflict between the law and rules regulating bail bond licensure.

❖LOCAL GOVERNMENTS: The local government was not affected by this rule initially and will not be affected now by its repeal.

❖OTHER PERSONS: The act of repealing this rule will not affect the insurance industry or the public. The enactment of H.B. 124 and Rule R590-186, implementing this bill, will create a change.

**(DAR Note:** R590-186 was a proposed new rule in the June 1, 1998, issue of the *Utah State Bulletin*, under DAR No. 21162. A change in proposed rule filing for R590-186 is in this *Bulletin*.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: The act of repealing this rule will not affect the insurance industry or the public. The enactment of H.B. 124 and Rule R590-186, implementing this bill, will create a change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Due to the bail bond legislation that was passed during the 1998 Legislative Session, it is necessary that we repeal this rule to avoid a conflict with the law. The act of repealing this rule will not create a fiscal impact with the state or local government, with the insurance industry, or the consumer.

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

Insurance Administration  
3110 State Office Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/16/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/18/1998

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**

~~[R590-125. Bail Bond Insurance Exemption.~~

**R590-125-1. Authority:**

~~This rule is written pursuant to authority created in the commissioner by Subsection 31A-1-103(3)(d), Utah Code~~

~~Annotated, allowing rulemaking to exempt certain business activities from regulation of the Insurance Department.~~

**R590-125-2. Definitions:**

~~For the purpose of this rule, the commissioner adopts for the definition of "bail bond insurance" and "persons" those definitions set forth in Subsections 31A-1-301(6) and 301(60).~~

**R590-125-3. Purpose:**

~~A. The purpose of this rule is to exempt from licensing requirements those persons offering for sale "bail bond insurance."~~

~~B. This rule is based upon a finding that the business of offering for sale of bail bond insurance does not require Insurance Department regulation for the protection of the public interest because bonding activities have sufficient oversight by the Court System.~~

~~C. The Department further finds that the practice of requiring limited licenses to sell bail bond insurance does nothing to limit potential abuses by the seller of these products.~~

~~D. This rule does not affect the status of surety companies, motor club licensees, or any other licensees under Title 31A.~~

**R590-125-4. Rule:**

~~Organizations or individuals issuing or offering for sale bail bond insurance are exempt from licensing requirements in Utah. This exemption applies only to those persons offering bail bond insurance exclusively, and does not operate to exempt those persons issuing or selling bail bond insurance as well as other insurance products, which would, without bail bond insurance, require licensure in Utah.~~

**KEY: insurance**

**1988**

**31A-1-103**

**Notice of Continuation 1993]**



Natural Resources; Oil, Gas and Mining; Coal

**R645-300-100**

Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21333

FILED: 07/28/1998, 09:39

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is designed to add additional categories of

information to the categories which may be maintained as confidential in the Utah Coal Regulatory Program.

**SUMMARY OF THE RULE OR CHANGE:** This rule amendment adds information on the nature and location of proposed or listed endangered species or threatened species and their critical habitats to the list of items that may be maintained as confidential in the Utah Coal Regulatory Program.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 40-10-6.5

**ANTICIPATED COST OR SAVINGS TO:**

- ❖THE STATE BUDGET: No cost impact is anticipated.\*
- ❖LOCAL GOVERNMENTS: No cost impact is anticipated.\*
- ❖OTHER PERSONS: No cost impact is anticipated.\*

\*In making this rule change, the Division will have the capacity to hold confidential location information on listed or proposed endangered species. Such information is required to be submitted as part of coal mine operation permit applications. With this rule change the information will be held confidential in the Division public records rooms in the same manner as archeological resource information. There will be negligible impact in submitting the several pages of information along with the multiple volumes of information and maps that are required of coal mine operators. Having the information readily available for Division review will streamline our permitting process for coal mine operators. There will be a small positive impact on the state budget (no separate travel will be required to view the information). Local governments should experience no impact as a result of the rule change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No additional compliance costs are anticipated as a result of this rulemaking.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department does not anticipate any fiscal impact on businesses as a result of this rulemaking.

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

Natural Resources  
Oil, Gas and Mining; Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple  
PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or by Internet E-mail at rdaniels@state.ut.us.

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 08/26/1998, 10:00 a.m., Ste. 1040A, 1594 West North Temple, Salt Lake City, UT 84114.**

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

**R645. Natural Resources; Oil, Gas and Mining; Coal.  
R645-300. Coal Mine Permitting: Administrative Procedures.  
R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.**

The rules in R645-300-100 present the procedures to carry out the entitled activities.

110. Introduction.

111. Objectives. The objectives of R645-300-100 are to:

111.100. Provide for broad and effective public participation in the review of applications and the issuance or denial of permits;

111.200. Ensure prompt and effective review of each permit application by the Division; and

111.300. Provide the requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

112. Responsibilities.

112.100. The Division has the responsibility to approve or disapprove permits under the approved State Program.

112.200. The Division and persons applying for permits under the State Program will involve the public throughout the permit process of the State Program.

112.300. The Division will assure implementation of the requirements of R645-300 under the State Program.

112.400. All persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. The applicant will provide all information in an administratively complete application for review by the Division in accordance with R645-300 and the State Program.

112.500. Any permittee seeking to renew a permit for coal mining and reclamation operations solely for the purpose of reclamation and not for the further extraction, processing, or handling of the coal resource will follow the procedures set forth in R645-303-232.500.

113. Coordination with requirements under other laws. The Division will provide for the coordination of review and issuance of permits for coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); and where federal and Indian lands covered by that Act are involved, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

120. Public Participation in Permit Processing.

121. Filing and Public Notice.

121.100. Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under R645-303-220 or renewal of a permit under R645-303-230 will place an advertisement in a local newspaper of general

circulation in the locality of the proposed coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the Division. The advertisement will contain, at a minimum, the following:

121.110. The name and business address of the applicant;

121.120. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it will indicate the north direction;

121.130. The location where a copy of the application is available for public inspection;

121.140. The name and address of the Division, where written comments, objections, or requests for informal conferences on the application may be submitted under R645-300-122 and R645-300-123;

121.150. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with R645-103-234; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; and

121.160. If the application includes a request for an experimental practice under R645-302-210, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

121.200. The applicant will make an application for a permit, significant revision under R645-303-220, or renewal of a permit under R645-303-230 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the coal mining and reclamation operation is proposed to occur, or an accessible public office approved by the Division. This copy of the application need not include confidential information exempt from disclosure under R645-300-124. The application required by R645-300-121 will be filed by the first date of newspaper advertisement of the application. The applicant will file any changes to the application with the public office at the same time the change is submitted to the Division.

121.300. Upon receipt of an administratively complete application for a permit, a significant revision to a permit under R645-303-220, or a renewal of a permit under R645-303-230, the Division will issue written notification indicating the applicant's intention to conduct coal mining and reclamation operations within the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification will be sent to:

121.310. Local governmental agencies with jurisdiction over or an interest in the area of the proposed coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

121.320. All federal or state governmental agencies with authority to issue permits and licenses applicable to the proposed

coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with the State Program, Section 503(a)(6) or Section 504(h) of P.L. 95-87, or 30 CFR 733.12; or those agencies with an interest in the proposed coal mining and reclamation operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, state and federal fish and wildlife agencies, and Utah State Historic Preservation Officer.

122. Comments and Objections on Permit Application.

122.100. Within 30 days of the last newspaper publication, written comments or objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by public entities notified under R645-300-121.300 with respect to the effects of the proposed coal mining and reclamation operation on the environment within their areas of responsibility.

122.200. Written objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by R645-300-121.

122.300. The Division will upon receipt of such written comments or objections:

122.310. Transmit a copy of the comments or objections to the applicants; and

122.320. File a copy for public inspection at the Division.

123. Informal Conferences.

123.100. Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a federal, state, or local government agency, may request in writing that the Division hold an informal conference on the application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230. The request will:

123.110. Briefly summarize the issues to be raised by the requestor at the conference;

123.120. State whether the requestor desires to have the conference conducted in the locality of the proposed coal mining and reclamation operation; and

123.130. Be filed with the Division no later than 30 days after the last publication of the newspaper advertisement required under R645-300-121.

123.200. Except as provided in R645-300-123.300, if an informal conference is requested in accordance with R645-300-123.100, the Division will hold an informal conference within 30 days following the receipt of the request. The informal conference will be conducted as follows:

123.210. If requested under R645-300-123.120, it will be held in the locality of the proposed coal mining and reclamation operation.

123.220. The date, time, and location of the informal conference will be sent to the applicant and other parties to the conference and advertised by the Division in a newspaper of general circulation in the locality of the proposed coal mining and

reclamation operation at least two weeks before the scheduled conference.

123.230. If requested in writing by a conference requestor at a reasonable time before the conference, the Division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

123.240. The requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) will apply to the conduct of the informal conference. The conference will be conducted by a representative of the Division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record will be made of the conference, unless waived by all the parties. The record will be maintained and will be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to R645-301-800.

123.300. If all parties requesting the informal conference withdrew their request before the conference is held, the informal conference may be canceled.

123.400. An informal conference held in accordance with R645-300-123 may be used by the Division as the public hearing required under R645-103-234 on proposed relocation or closing of public roads.

#### 124. Public Availability of Permit Applications.

124.100. General Availability. Except as provided in R645-300-124.200 and R645-300-124.300, all applications for permits; permit changes; permit renewals; and transfers, assignments or sales of permit rights on file with the Division will be made available, at reasonable times, for public inspection and copying.

124.200. Limited Availability. Except as provided in R645-300-124.310, information pertaining to coal seams, test borings, core samplings, or soil samples in an application will be made available to any person with an interest which is or may be adversely affected. Information subject to R645-300-124 will be made available to the public when such information is required to be on public file pursuant to Utah law.

124.300. Confidentiality. The Division will provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which will be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to:

124.310. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment.

124.320. Information required under section 40-10-10 of the Act that is authorized by that section to be held confidential and is not on public file pursuant to Utah law and that the applicant has requested in writing to be held confidential; and

124.330. Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (P. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

124.340. Information on the nature and location of listed or proposed endangered or threatened species of plants or animals or

their critical habitats listed pursuant to the endangered Species Act of 1973 (16 U.S.C. 470).

130. Review of Permit Application.

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision - 120 days.

131.111.2. Amendments - 60 days.

131.112. Permit renewal - 120 days.

131.113. New underground mine applications - One year.

131.114. New surface mine applications - One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

132. Review of Compliance.

132.100. The Division will review available information on state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under section 518 of the federal Act, SMCRA-derived laws of other states, and section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states and federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant. The Division will then make a finding that neither the applicant, nor any person who owns or controls the applicant, nor any person owned or controlled by the applicant is currently in violation of any law, rule, or regulation referred to in R645-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:

132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

132.120. Establish for the Division that the applicant or any person owned or controlled by the applicant or any person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under R645-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R645-300-132.110.

132.200. Any permit that is issued on the basis of proof submitted under R645-300-132.110 or pending the outcome of an appeal described in R645-300-132.120 will be issued conditionally.

132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R645-300-210.

133. Written Findings for Permit Application Approval. No permit application or application for a permit change will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

133.100. The application is complete and accurate and the applicant has complied with all the requirements of the State Program;

133.200. The proposed permit area is:

133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R645-103-400 or 30 CFR 769, to have an area designated as unsuitable for coal mining and reclamation operations, unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments were made in relation to the operation covered by the permit application; or

133.220. Not within an area designated as unsuitable for mining pursuant to R645-103-300 and R645-103-400 or 30 CFR 769 or subject to the prohibitions or limitations of R645-103-230;

133.300. For coal mining and reclamation operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under R645-301-114.200;

133.400. The Division has made an assessment of the probable cumulative impacts of all anticipated coal mining and reclamation operations on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

133.500. The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

133.600. The Division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Division has determined that no additional protection measures are necessary; and

133.700. The applicant has:

133.710. Demonstrated that reclamation as required by the State Program can be accomplished according to information given in the permit application.

133.720. Demonstrated that any existing structure will comply with the applicable performance standards of R645-301 and R645-302.

133.730. Paid all reclamation fees from previous and existing coal mining and reclamation operations as required by 30 CFR Part 870.

133.740. Satisfied the applicable requirements of R645-302.

133.750. If applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of R645-301-353.400.

133.800. For a proposed remaining operation where the applicant intends to reclaim in accordance with the requirements of R645-301-553.500, the site of the operation is a previously mined area as defined in R645-100-200.

134. Performance Bond Submittal. If the Division decides to approve the application, it will require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of R645-301-800.

140. Permit Conditions. Each permit issued by the Division will be subject to the following conditions:

141. The permittee will conduct coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to R645-301-800.

142. The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

143. The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

144. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee will allow the authorized representatives of the Division to:

144.100. Have the right of entry provided for in R645-400-110 and R645-400-220.

144.200. Be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.

145. The permittee will take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

145.100. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

145.200. Immediate implementation of measures necessary to comply; and

145.300. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

146. As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.



147. The operator will pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

148. Within 30 days after a cessation order is issued under R645-400-310, except where a stay of the cessation order is granted and remains in effect, the permittee will either submit the following information current to when the order was issued or inform the Division in writing that there has been no change since the immediately preceding submittal of such information:

148.100. Any new information needed to correct or update the information previously submitted to the Division by the permittee under R645-301-112.300.

148.200. If not previously submitted, the information required from a permit applicant by R645-301-112.300.

150. Permit Issuance and Right of Renewal.

151. Decision. If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R645-301-800. If the application is disapproved, specific reasons therefore will be set forth in the notification required by R645-300-152.

152. Notification. The Division will issue written notification of the decision to the following persons and entities:

152.100. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference;

152.200. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land; and

152.300. The Office.

153. Permit Term. Each permit will be issued for a fixed term of five years or less, unless the requirements of R645-301-116 are met.

154. Right of Renewal. Permit application approval will apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with R645-300-151 will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with R645-303-230.

155. Initiation of Operations.

155.100. A permit will terminate if the permittee has not begun the coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.

155.200. The Division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:

155.210. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

155.220. There are conditions beyond the control and without the fault or negligence of the permittee.

155.300. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee will be deemed to have commenced coal mining and reclamation operations at the time that the construction of the synthetic fuel or generating facility is initiated.

155.400. Extensions of time granted by the Division under R645-300-155 will be specifically set forth in the permit, and notice of the extension will be made public by the Division.

160. Improvidently Issued Permits: Review Procedures.

161. Permit review. When the Division has reason to believe that it improvidently issued a coal mining and reclamation permit it will review the circumstances under which the permit was issued, using the criteria in R645-300-162. Where the Division finds that the permit was improvidently issued, it shall comply with R645-300-163.

162. Review criteria. The Division will find that a coal mining and reclamation permit was improvidently issued if:

162.100. Under the violations review criteria of the regulatory program at the time the permit was issued;

162.110. The Division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

162.120. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

162.200. The violation, penalty or fee;

162.210. Remains unabated or delinquent; and

162.220. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

162.300. Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

163. Remedial Measures.

When the Division, under R645-300-162 finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued it will use one or more of the following remedial measures:

163.100. Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

163.200. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

163.300. Suspend the permit until the violation is abated or the penalty or fee is paid; or

163.400. Rescind the permit under R645-300-164.

164. Improvidently Issued Permits: Rescission procedures. When the Division under R645-300-163 elects to rescind an improvidently issued permit it will serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under R645-300-162 and states that:

164.100. Automatic suspension and rescissions. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, that;

164.110. The finding of the Division under R645-300-162 was erroneous;

164.120. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

164.130. The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

164.140. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

164.200. Cessation of operations. After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Division; and

164.300. Right to appeal. The permittee may file an appeal for administrative review of the notice under R645-300-200.

#### 170. Final Compliance Review

After an application is approved, but before the permit is issued, the Division will reconsider its decision to approve the application based on the compliance review required by rule R645-300-132.100 and in light of any new information submitted under R645-301-112.900 and R645-301-113.400.

### **R645-300-200. Administrative and Judicial Review of Decisions on Permits.**

The rules in R645-300-200 present the procedures for performing the entitled activities.

#### 210. Administrative Review.

211. General. Within 30 days after an applicant or permittee is notified of the decision of the Division concerning a determination made under R645-106, an application for approval of exploration required under R645-200, a permit for coal mining and reclamation operations, a permit change, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with R645-300-200.

#### 212. Hearings.

212.100. The Board will start the administrative hearing within 30 days of such request. The hearing will be on the record and adjudicatory in nature. No person who presided at an informal conference under R645-300-123 will either preside at the hearing or participate in the decision following the hearing or administrative appeal.

212.200. The Board may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

212.210. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

212.220. The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

212.230. The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

212.240. The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Division except that continuation under an existing permit may be allowed where the operation has a valid permit issued under 40-10-11 of the Act.

212.300. The hearing will be conducted by the Board under the terms of the R641 Rules, including the requirement that there be no ex parte contact between the Board and representatives of parties appearing before the Board.

212.400. Within 30 days after the close of the record, the Board will issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the Board with respect to the appeal of the decision.

#### 220. Judicial Review.

221. General. Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in R645-300-222 or R645-300-223 if:

221.100. The applicant or person is aggrieved by the decision of the Board in the administrative hearing conducted pursuant to R645-300-200; or

221.200. The Board during administrative review under R645-300-200 fails to act within applicable time limits specified in the State Program.

222. State Program. Action of the Division or Board will be subject to judicial review by a court of competent jurisdiction, as provided for in the State Program, but the availability of such review will not be construed to limit the operation of the rights established in 40-10-21 of the Act.

223. Federal Lands Program. The action of the Division or Board is subject to judicial review by the United States District Court for the district in which the coal exploration or coal mining and reclamation operation is or would be located, in the time and manner provided for in Section 526(a)(2) and (b) of the Federal Act. The availability of such review will not be considered to limit the operations of rights established in Section 520 of the Federal Act.

**KEY: reclamation, coal mines**  
**[1992]1998**

**40-10-1 et seq.**

◆ ————— ◆

**Natural Resources; Oil, Gas and  
Mining; Coal  
R645-301-700  
Hydrology**

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 21334

FILED: 07/28/1998, 09:39

RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This change replaces a term used in this rule with one which is a defined term of the Coal Regulatory Program.

**SUMMARY OF THE RULE OR CHANGE:** "Underground mining activities" is replaced with "UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES."

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 40-10-6.5

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** No cost impact is anticipated.\*

❖**LOCAL GOVERNMENTS:** No cost impact is anticipated.\*

❖**OTHER PERSONS:** No cost impact is anticipated.\*

\*In making the last rule change, the Division inadvertently used the wrong definition. This proposed change restores the correctly defined term. This language will now conform with federally accepted language. This is essentially a housekeeping change with no impact, cost or otherwise, to the state budget, local government, or other parties.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No additional compliance costs are anticipated as a result of this rulemaking.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department does not anticipate any fiscal impact on businesses as a result of this rulemaking.

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

Natural Resources  
Oil, Gas and Mining; Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple  
PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or by Internet E-mail at rdaniels@state.ut.us.

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 08/26/1998, 10:00 a.m., Ste. 1040A, 1594 West North Temple, Salt Lake City, UT 84114.**

**THIS RULE MAY BECOME EFFECTIVE ON:** 09/15/1998

**AUTHORIZED BY:** Ronald W. Daniels, Coordinator of Minerals Research

**R645. Natural Resources; Oil, Gas and Mining; Coal.****R645-301. Coal Mine Permitting: Permit Application Requirements.****R645-301-700. Hydrology.**

710. Introduction.

711. General Requirements. Each permit application will include descriptions of:

711.100. Existing hydrologic resources as given under R645-301-720.

711.200. Proposed operations and potential impacts to the hydrologic balance as given under R645-301-730.

711.300. The methods and calculations utilized to achieve compliance with hydrologic design criteria and plans given under R645-301-740.

711.400. Applicable hydrologic performance standards as given under R645-301-750.

711.500. Reclamation activities as given under R645-301-760.

712. Certification. All cross sections, maps and plans required by R645-301-722 as appropriate, and R645-301-731.700 will be prepared and certified according to R645-301-512.

713. Inspection. Impoundments will be inspected as described under R645-301-514.300.

720. Environmental Description.

721. General Requirements. Each permit application will include a description of the existing, premining hydrologic resources within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

722. Cross Sections and Maps. The application will include cross sections and maps showing:

722.100. Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas. For UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, location and extent will include, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

722.200. Location of surface water bodies such as streams, lakes, ponds and springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

722.300. Elevations and locations of monitoring stations used to gather baseline data on water quality and quantity in preparation of the application;

722.400. Location and depth, if available, of water wells in the permit area and adjacent area; and

722.500. Sufficient slope measurements or contour maps to adequately represent the existing land surface configuration of proposed disturbed areas for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be measured and recorded to take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

723. Sampling and Analysis. All water quality analyses performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D. C. 20036.

724. Baseline Information. The application will include the following baseline hydrologic, geologic and climatologic information, and any additional information required by the Division.

724.100. Ground Water Information. The location and ownership for the permit and adjacent areas of existing wells, springs and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions will include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Ground-water quantity descriptions will include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

724.200. Surface water information. The name, location, ownership and description of all surface-water bodies such as streams, lakes and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions will include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Baseline acidity and alkalinity information will be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions will include, at a minimum, baseline information on seasonal flow rates.

724.300. Geologic Information. Each application will include geologic information in sufficient detail, as given under R645-301-624, to assist in:

724.310. Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; and

724.320. Determining whether reclamation as required by the R645 Rules can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

724.400. Climatological Information.

724.410. When requested by the Division, the permit application will contain a statement of the climatological factors that are representative of the proposed permit area, including:

724.411. The average seasonal precipitation;

724.412. The average direction and velocity of prevailing winds; and

724.413. Seasonal temperature ranges.

724.420. The Division may request such additional data as deemed necessary to ensure compliance with the requirements of R645-301 and R645-302.

724.500. Supplemental information. If the determination of the PHC required by R645-301-728 indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under R645-301-724.100 and R645-301-724.200 will be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

724.700. Each permit application that proposes to conduct coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream will meet the requirements of R645-302-320.

725. Baseline Cumulative Impact Area Information.

725.100. Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations on surface- and ground-water systems as required by R645-301-729 will be provided to the Division if available from appropriate federal or state agencies.

725.200. If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.

725.300. The permit will not be approved until the necessary hydrologic and geologic information is available to the Division.

726. Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.

727. Alternative Water Source Information. If the probable hydrologic consequences determination required by R645-301-728 indicates that the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application will contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

728. Probable Hydrologic Consequences (PHC) Determination.

728.100. The permit application will contain a determination of the PHC of the proposed coal mining and reclamation operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

728.200. The PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

728.300. The PHC determination will include findings on:

728.310. Whether adverse impacts may occur to the hydrologic balance;

728.320. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

728.330. What impact the proposed coal mining and reclamation operation will have on:

728.331. Sediment yield from the disturbed area;

728.332. Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

728.333. Flooding or streamflow alteration;

728.334. Ground-water and surface-water availability; and

728.335. Other characteristics as required by the Division; and

728.340. Whether the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY will proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; Or

728.350. Whether the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conducted after October 24, 1992 may result in contamination, diminution or interruption of State-appropriated water in existence at the time the application is submitted and used for legitimate purposes within the permit or adjacent areas.

728.400. An application for a permit revision will be reviewed by the Division to determine whether a new or updated PHC determination will be required.

729. Cumulative Hydrologic Impact Assessment (CHIA).

729.100. The Division will provide an assessment of the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations upon surface- and ground-water systems in the cumulative impact area. The CHIA will be sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

729.200. An application for a permit revision will be reviewed by the Division to determine whether a new or updated CHIA will be required.

730. Operation Plan.

731. General Requirements. The permit application will include a plan, with maps and descriptions, indicating how the relevant requirements of R645-301-730, R645-301-740, R645-301-750 and R645-301-760 will be met. The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act

(33 U.S.C. 1251 et seq.); and to meet applicable federal and Utah water quality laws and regulations. The plan will include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the plan will include measures to be taken to protect or replace water rights and restore approximate premining recharge capacity. The plan will specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under R645-301-728 and will include preventative and remedial measures.

The Division may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Coal mining and reclamation operations that minimize water pollution and changes in flow will be used in preference to water treatment.

731.100. Hydrologic-Balance Protection.

731.110. Ground-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.111. Ground-water quality will be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and

731.112. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES ground-water quantity will be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

731.120. Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.121. Surface-water quality will be protected by handling earth materials, ground-water discharges and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and, otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800 and R645-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls; and

731.122. Surface-water quantity and flow rates will be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under R645-301-731.

731.200. Water Monitoring.

731.210. Ground-Water Monitoring. Ground-water monitoring will be conducted according to the plan approved under R645-301-731.200 and the following:

731.211. The permit application will include a ground-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in R645-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese and water levels will be monitored;

731.212. Ground-water will be monitored and data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731;

731.213. If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division;

731.214. Ground-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with the procedures of R645-303-220 through R645-303-228, the Division may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.214 that:

731.214.1. The coal mining and reclamation operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.214.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.211.

731.215. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of ground water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.220. Surface-Water Monitoring. Surface-water monitoring will be conducted according to the plan approved under R645-301-731.220 and the following:

731.221. The permit application will include a surface-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability

of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in R645-301-731 as well as the effluent limitations found in R645-301-751;

731.222. The plan will identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance:

731.222.1. At all monitoring locations in streams, lakes and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese and flow will be monitored; and

731.222.2. For point-source discharges, monitoring will be conducted in accordance with 40 CFR Parts 122 and 123, R645-301-751 and as required by the Utah Division of Environmental Health for National Pollutant Discharge Elimination System (NPDES) permits;

731.223. Surface-water monitoring data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements;

731.224. Surface-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with R645-303-220 through R645-303-228, the Division may modify the monitoring requirements, except those required by the Utah Division of Environmental Health, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.224 that:

731.224.1. The operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.224.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.221.

731.225. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of surface water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.300. Acid- and Toxic-Forming Materials.

731.310. Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water will be avoided by:

731.311. Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be

detrimental to vegetation or to public health and safety if not buried and/or treated; and

731.312. Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff and the infiltration of polluted water. Storage will be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

731.320. Storage, burial or treatment practices will be consistent with other material handling and disposal provisions of R645 Rules.

731.400. Transfer of Wells. Before final release of bond, exploratory or monitoring wells will be sealed in a safe and environmentally sound manner in accordance with R645-301-631, R645-301-738, and R645-301-765. With the prior approval of the Division, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer will comply with Utah and local laws and the permittee will remain responsible for the proper management of the well until bond release in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

731.500. Discharges.

731.510. Discharges into an underground mine.

731.511. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will:

731.511.1. Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from coal mining and reclamation operations;

731.511.2. Not result in a violation of applicable water quality standards or effluent limitations;

731.511.3. Be at a known rate and quality which will meet the effluent limitations of R645-301-751 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Division; and

731.511.4. Meet with the approval of MSHA.

731.512. Discharges will be limited to the following:

731.512.1. Water;

731.512.2. Coal processing waste;

731.512.3. Fly ash from a coal fired facility;

731.512.4. Sludge from an acid-mine-drainage treatment facility;

731.512.5. Flue-gas desulfurization sludge;

731.512.6. Inert materials used for stabilizing underground mines; and

731.512.7. Underground mine development wastes.

731.513. Water from the underground workings of an UNDERGROUND COAL MINING AND RECLAMATION ACTIVITY may be diverted into other underground workings according to the requirements of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

731.520. Gravity Discharges from UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

731.521. Surface entries and accesses to underground workings will be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to R645-301-731.522, may be allowed by the Division if it is demonstrated that

the untreated or treated discharge complies with the performance standards of R645-301 and R645-302 and any additional NPDES permit requirements.

731.522. Notwithstanding anything to the contrary in R645-301-731.521, the surface entries and accesses of drift mines first used after January 21, 1981 and located in acid-producing or iron-producing coal seams will be located in such a manner as to prevent any gravity discharge from the mine.

731.530. State-appropriated water supply. The permittee will promptly replace any State-appropriated water supply that is contaminated, diminished or interrupted by UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES [underground mining activities] conducted after October 24, 1992, if the affected water supply was in existence before the date the Division received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic and geologic information required in R645-301-700. will be used to determine the impact of mining activities upon the water supply.

731.600. Stream Buffer Zones.

731.610. No land within 100 feet of a perennial stream or an intermittent stream will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R645-301-742.300.

731.620. The area not to be disturbed will be designated as a buffer zone, and the operator will mark it as specified in R645-301-521.260.

731.700. Cross Sections and Maps. Each application will contain for the proposed permit area:

731.710. A map showing the locations of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Division, and those surface waters which will receive discharges from affected areas in the proposed permit area;

731.720. A map showing the locations of each water diversion, collection, conveyance, treatment, storage and discharge facility to be used. The map will be prepared and certified according to R645-301-512;

731.730. A map showing locations and elevations of each station to be used for water monitoring during coal mining and reclamation operations. The map will be prepared and certified according to R645-301-512;

731.740. A map showing the locations of each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The map will be prepared and certified according to R645-301-512;

731.750. Cross sections for each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The cross sections will be prepared and certified according to R645-301-512.200; and

731.760. Other relevant cross sections and maps required by the Division depending on the structures and facilities located in the permit area.

731.800. Water Rights and Replacement. Any person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in R645-301-624.100 through R645-301-624.200, R645-301-625, R645-301-626, R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be used to determine the extent of the impact of mining upon ground water and surface water.

732. Sediment Control Measures.

732.100. Siltation Structures. Siltation structures will be constructed and maintained to comply with R645-301-742.214. Any siltation structure that impounds water will be constructed and maintained to comply with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

732.200. Sedimentation Ponds.

732.210. Sedimentation ponds whether temporary or permanent, will be designed in compliance with the requirements of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment will also be constructed and maintained to comply with the requirements of R645-301-743, R645-301-533.100 through R645-301-533.600, R645-301-512.240, R645-301-514.310 through R645-301-514.321 and R645-301-515.200.

732.220. Each plan will, at a minimum, comply with the MSHA requirements given under R645-301-513.100 and R645-301-513.200.

732.300. Diversions. All diversions will be constructed and maintained to comply with the requirements of R645-301-742.100 and R645-301-742.300.

732.400. Road Drainage. All roads will be constructed, maintained and reconstructed to comply with R645-301-742.400.

732.410. The permit application will contain a description of measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

732.420. The permit application will contain a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for Division approval under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

733. Impoundments.

733.100. General Plans. Each permit application will contain a general plan for each proposed water impoundment within the proposed permit area. Each general plan will:

733.110. Be prepared and certified as described under R645-301-512;

733.120. Contain maps and cross sections;

733.130. Contain a narrative that describes the structure;

733.140. Contain the results of a survey as described under R645-301-531;

733.150. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure; and

733.160. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Division. The Division will have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

733.200. Permanent and Temporary Impoundments.

733.210. Permanent and temporary impoundments will be designed to comply with the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.226, R645-301-743.240, and R645-301-743. Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration will comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will be submitted to the Division as part of the permit application package. For an impoundment not meeting the size criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, the Division may establish through the Utah State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in R645-301-533.100.

733.220. A permanent impoundment of water may be created, if authorized by the Division in the approved permit based upon the following demonstration:

733.221. The size and configuration of such impoundment will be adequate for its intended purposes;

733.222. The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Utah and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable Utah and federal water quality standards;

733.223. The water level will be sufficiently stable and be capable of supporting the intended use;

733.224. Final grading will provide for adequate safety and access for proposed water users;

733.225. The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses; and

733.226. The impoundment will be suitable for the approved postmining land use.



733.230. The Division may authorize the construction of temporary impoundments as part of coal mining and reclamation operations.

733.240. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division according to R645-301-515.200.

734. Discharge Structures. Discharge structures will be constructed and maintained to comply with R645-301-744.

735. Disposal of Excess Spoil. Areas designated for the disposal of excess spoil and excess spoil structures will be constructed and maintained to comply with R645-301-745.

736. Coal Mine Waste. Areas designated for the disposal of coal mine waste and coal mine waste structures will be constructed and maintained to comply with R645-301-746.

737. Noncoal Mine Waste. Noncoal mine waste will be stored and final disposal of noncoal mine waste will comply with R645-301-747.

738. Temporary Casing and Sealing of Wells. Each well which has been identified in the approved permit application to be used to monitor ground water conditions will comply with R645-301-748 and be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES protected during use by barricades, or fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the operator conducting SURFACE COAL MINING AND RECLAMATION ACTIVITIES.

740. Design Criteria and Plans.

741. General Requirements. Each permit application will include site-specific plans that incorporate minimum design criteria as set forth in R645-301-740 for the control of drainage from disturbed and undisturbed areas.

742. Sediment Control Measures.

742.100. General Requirements.

742.110. Appropriate sediment control measures will be designed, constructed and maintained using the best technology currently available to:

742.111. Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area;

742.112. Meet the effluent limitations under R645-301-751; and

742.113. Minimize erosion to the extent possible.

742.120. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to:

742.121. Retaining sediment within disturbed areas;

742.122. Diverting runoff away from disturbed areas;

742.123. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

742.124. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that

reduce overland flow velocities, reduce runoff volumes or trap sediment;

742.125. Treating with chemicals; and

742.126. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, treating mine drainage in underground sumps.

742.200. Siltation Structures.

742.210. General Requirements.

742.211. Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area will be prevented to the extent possible using the best technology currently available.

742.212. Siltation structures for an area will be constructed before beginning any coal mining and reclamation operations in that area and, upon construction, will be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

742.213. Any siltation structures which impounds water will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

742.214. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of R645-301-751 will be passed through a siltation structure before leaving the permit area.

742.220. Sedimentation Ponds.

742.221. Sedimentation ponds, when used, will:

742.221.1. Be used individually or in series;

742.221.2. Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Division; and

742.221.3. Be designed, constructed, and maintained to:

742.221.31. Provide adequate sediment storage volume;

742.221.32. Provide adequate detention time to allow the effluent from the ponds to meet Utah and federal effluent limitations;

742.221.33. Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Division based on terrain, climate, or other site-specific conditions and on a demonstration by the operator that the effluent limitations of R645-301-751 will be met;

742.221.34. Provide a nonclogging dewatering device adequate to maintain the detention time required under R645-301-742.221.32.

742.221.35. Minimize, to the extent possible, short circuiting;

742.221.36. Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

742.221.37. Ensure against excessive settlement;

742.221.38. Be free of sod, large roots, frozen soil, and acid- or toxic forming coal-processing waste; and

742.221.39. Be compacted properly.

742.222. Sedimentation ponds meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will comply with all the requirements of that section, and will have a single spillway or principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event or greater event as demonstrated to be necessary by the Division.

742.223. Sedimentation ponds not meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event or greater event as demonstrated to be needed by the Division. Such ponds may use a single open channel spillway if the spillway is:

742.223.1. Of nonerodible construction and designed to carry sustained flows; or

742.223.2. Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

742.224. In lieu of meeting the requirements of R645-301-742.223.1 and 742.223.2 the Division may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer in accordance with R645-301-512.200 that the sedimentation pond will safely control the design precipitation event. The water will be removed from the pond in accordance with current, prudent, engineering practices and any sediment pond so used will not be located where failure would be expected to cause loss of life or serious property damage.

742.225. An exception to the sediment pond location guidance in R645-301-742.224 may be allowed:

742.225.1. In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), if the pond is designed to control the precipitation of the probable maximum precipitation of a 6 hour event or greater event if specified by the Division; or (30 CFR 816.46(c)(2)(ii)(A))

742.225.2. In the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), if the pond is designed to control the precipitation of a 100 year 6 hour event or greater event if demonstrated to be needed by the Division.

742.230. Other Treatment Facilities.

742.231. Other treatment facilities will be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Division based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of R645-301-751 will be met.

742.232. Other treatment facilities will be designed in accordance with the applicable requirements of R645-301-742.220.

742.240. Exemptions. Exemptions to the requirements of R645-301-742.200 and R645-301-763 may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed areas to meet the effluent limitations under R645-301-751 or the applicable Utah and federal water quality standards for the receiving waters.

742.300. Diversions.

742.310. General Requirements.

742.311. With the approval of the Division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions will be designed to minimize adverse impacts to the hydrologic balance

within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions will not be used to divert water into underground mines without approval of the Division in accordance with R645-301-731.510.

742.312. The diversion and its appurtenant structures will be designed, located, constructed, maintained and used to:

742.312.1. Be stable;

742.312.2. Provide protection against flooding and resultant damage to life and property;

742.312.3. Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

742.312.4. Comply with all applicable local, Utah, and federal laws and regulations.

742.313. Temporary diversions will be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process will be restored in accordance with R645-301 and R645-302. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion will be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement will not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion will be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

742.314. The Division may specify additional design criteria for diversions to meet the requirements of R645-301-742.300.

742.320. Diversion of Perennial and Intermittent Streams.

742.321. Diversion of perennial and intermittent streams within the permit area may be approved by the Division after making the finding relating to stream buffer zones under R645-301-731.600.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams will be certified by a qualified registered professional engineer as meeting the performance standards of R645-301 and R645-302 and any design criteria set by the Division.

742.330. Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R645-301-742.310.

742.333. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

742.400. Road Drainage.

742.410. All Roads.

742.411. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads will incorporate appropriate limits for surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.

742.412. No part of any road will be located in the channel of an intermittent or perennial stream unless specifically approved by the Division in accordance with applicable parts of R645-301-731 through R645-301-742.300.

742.413. Roads will be located to minimize downstream sedimentation and flooding.

742.420. Primary Roads.

742.421. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

742.422. Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction.

742.423. Drainage Control.

742.423.1. Each primary road will be designed, constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system will be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or an alternative event of greater size as demonstrated to be needed by the Division.

742.423.2. Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

742.423.3. Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins will be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

742.423.4. Natural stream channels will not be altered or relocated without the prior approval of the Division in accordance with R645-301-731.100 through R645-301-731.522, R645-301-731.600, R645-301-731.800, R645-301-742.300, and R645-301-751.

742.423.5. Except as provided in R645-301-742.422, drainage structures will be used for stream channel crossings, made using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practice.

743. Impoundments.

743.100. General Requirements. The requirements of R645-301-743 apply to both temporary and permanent impoundments.

743.110. Impoundments meeting the criteria of the MSHA, 30 CFR 77.216(a) will comply with the requirements of 77.216 and

R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

743.120. The design of impoundments will be prepared and certified as described under R645-301-512. Impoundments will have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

743.130. Impoundments will include either a combination of principal and emergency spillways or a single spillway as specified in 743.131 which will be designed and constructed to safely pass the design precipitation event or greater event specified in R645-301-743.200 or R645-301-743.300.

743.131. The Division may approve a single-open channel spillway that is:

743.131.1. Of nonerodible construction and designed to carry sustained flows; or

743.131.2. Earth-or grass lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

743.132. In lieu of meeting the requirements of 743.131 the Division may approve an impoundment which meets the requirements of the sediment pond criteria of R645-301-742.224 and 742.225.

743.140. Impoundments will be inspected as described under R645-301-514.300.

743.200. The design precipitation event for the spillways for a permanent impoundment meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 100-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

743.300. The design precipitation event for the spillways for an impoundment not meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 25-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

744. Discharge Structures.

744.100. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions will be controlled, by energy dissipators, riprap channels and other devices, where necessary to reduce erosion to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

744.200. Discharge structures will be designed according to standard engineering design procedures.

745. Disposal of Excess Spoil.

745.100. General Requirements.

745.110. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to:

745.111. Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

745.112. Ensure permanent impoundments are not located on the completed fill. Small depressions may be allowed by the Division if they are needed to retain moisture or minimize erosion, create and enhance wildlife habitat or assist revegetation, and if they are not incompatible with the stability of the fill; and

745.113. Adequately cover or treat excess spoil that is acid- and toxic-forming with nonacid nontoxic material to control the

impact on surface and ground water in accordance with R645-301-731.300 and to minimize adverse effects on plant growth and the approved postmining land use.

745.120. Drainage control. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill and ensure stability.

745.121. Diversions will comply with the requirements of R645-301-742.300.

745.122. Underdrains will consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Division. The underdrain system will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and will be protected from piping and contamination by an adequate filter. Rock underdrains will be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone or other durable rock) that does not slake in water or degrade to soil materials and which is free of coal, clay or other nondurable material. Perforated pipe underdrains will be corrosion resistant and will have characteristics consistent with the long-term life of the fill.

745.200. Valley Fills and Head-of-Hollow Fills.

745.210. Valley fills and head-of-hollow fills will meet the applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 and the requirements of R645-301-745.200 and R645-301-535.200.

745.220. Drainage Control.

745.221. The top surface of the completed fill will be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

745.222. Runoff from areas above the fill and runoff from the surface of the fill will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.300. Durable Rock Fills. The Division may approve disposal of excess durable rock spoil provided the following conditions are satisfied:

745.310. Except as provided in R645-301-745.300, the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 are met;

745.320. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met; and

745.330. Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into

stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.400. Preexisting Benches. The Division may approve the disposal of excess spoil through placement on preexisting benches, provided that the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.300 through R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 and the requirements of R645-301-535.400 are met.

746. Coal Mine Waste.

746.100. General Requirements.

746.110. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division.

746.120. Coal mine waste will be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.

746.200. Refuse Piles.

746.210. Refuse piles will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100 and the additional requirements of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200 and the requirements of the MSHA, 30 CFR 77.214 and 77.215.

746.211. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

746.212. Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

746.213. Underdrains will comply with the requirements of R645-301-745.122.

746.220. Surface Area Stabilization.

746.221. Slope protection will be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, will be revegetated upon completion of construction.

746.222. No permanent impoundments will be allowed on the completed refuse pile. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

746.300. Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-

536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

746.310. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The potential impact of acid mine seepage through the impounding structure will be discussed in detail.

746.311. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-513.200, R645-301-514.310 through R645-301-514.330, R645-301-515.200, R645-301-533.100 through R645-301-533.500, R645-301-733.230, R645-301-733.240, R645-301-743.100, and R645-301-743.300. Such structures may not be retained permanently as part of the approved postmining land use.

746.312. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) will have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event, or greater event as demonstrated to be needed by the Division.

746.320. Spillways and outlet works will be designed to provide adequate protection against erosion and corrosion. Inlets will be protected against blockage.

746.330. Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

746.340. Impounding structures constructed of or impounding coal mine waste will be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following that event.

746.400. Return of Coal Processing Waste to Abandoned Underground Workings. Each permit application to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, if appropriate, include a plan of proposed methods for returning coal processing waste to abandoned underground workings as follows:

746.410. The plan will describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime;

746.420. The plan will describe each permanent monitoring well to be located in the backfilled areas, the stratum underlying the mined coal and gradient from the backfilled area; and

746.430. The requirements of R645-301-513.300, R645-301-528.321, R645-301-536.700, R645-301-746.410 and R645-746.420 will also apply to pneumatic backfilling operations, except where the operations are exempted by the Division from requirements specifying hydrologic monitoring.

747. Disposal of Noncoal Mine Waste.

747.100. Noncoal mine waste, including but not limited to grease, lubricants, paints, flammable liquids, garbage, machinery,

lumber and other combustible materials generated during coal mining and reclamation operations will be placed and stored in a controlled manner in a designated portion of the permit area or state-approved solid waste disposal area.

747.200. Placement and storage of noncoal mine waste within the permit area will ensure that leachate and surface runoff do not degrade surface or ground water.

747.300. Final disposal of noncoal mine waste within the permit area will ensure that leachate and drainage does not degrade surface or underground water.

748. Casing and Sealing of Wells. Each water well will be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface water, to minimize disturbance to the hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If a water well is exposed by coal mining and reclamation operations, it will be permanently closed unless otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must comply with the provision of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

750. Performance Standards.

All coal mining and reclamation operations will be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area and support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, operations will be conducted to assure the protection or replacement of water rights in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302.

751. Water Quality Standards and Effluent Limitations. Discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

752. Sediment Control Measures. Sediment control measures must be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-760.

752.100. Siltation structures and diversions will be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-763.

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained and reclaimed according to R645-301-732.400, R645-301-742.400 and R645-301-762 and to achieve the following:

752.210. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

752.230. Neither cause nor contribute to, directly or indirectly, the violation of effluent standards given under R645-301-751;

752.240. Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems; and

752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

753. Impoundments and Discharge Structures. Impoundments and discharge structures will be located, maintained, constructed and reclaimed to comply with R645-301-733, R645-301-734, R645-301-743, R645-301-745 and R645-301-760.

754. Disposal of Excess Spoil, Coal Mine Waste and Noncoal Mine Waste. Disposal areas for excess spoil, coal mine waste and noncoal mine waste will be located, maintained, constructed and reclaimed to comply with R645-301-735, R645-301-736, R645-301-745, R645-301-746, R645-301-747 and R645-301-760.

755. Casing and Sealing of Wells. All wells will be managed to comply with R645-301-748 and R645-301-765. Water monitoring wells will be managed on a temporary basis according to R645-301-738.

760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R645-301 and R645-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of R645-301 and R645-302 and to conform to the approved reclamation plan.

762. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for coal mining and reclamation operations, including:

762.100. Restoring the natural drainage patterns;

762.200. Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain.

763. Siltation Structures.

763.100. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

763.200. When the siltation structure is removed, the land on which the siltation structure was located will be regraded and revegetated in accordance with the reclamation plan and R645-301-358, R645-301-356, and R645-301-357. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.

764. Structure Removal. The application will include the timetable and plans to remove each structure, if appropriate.

765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R645-301-

529.400, R645-301-631.100, and R645-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

**KEY: reclamation, coal mines**  
**[December 12, 1997]1998**  
**Notice of Continuation June 6, 1997**

**40-10-1 et seq.**

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## Pardons (Board of), Administration

# R671-205

### Credit for Time Served

#### NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21311

FILED: 07/17/1998, 12:42

RECEIVED BY: NL

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Provides a mechanism for the Board of Pardons and Parole to grant credit for time served in criminal cases which affects the expiration dates of sentences. The existing rule expired on July 15, 1998, and this action reinstates the rule.

**SUMMARY OF THE RULE OR CHANGE:** Provides a mechanism for the Board of pardons and parole to grant credit for time served in criminal cases which affects the expiration dates of sentences.

**(DAR Note:** A corresponding 120-Day (Emergency) Rule that is effective as of July 17, 1998 is under DAR No. 21310 in this *Bulletin*.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 77-27-7 and 77-27-9

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** Without the ability to grant credit for time served, incarceration may be extended beyond what is appropriate which could extend length of incarceration. This will result in additional costs to the state for the housing of inmates. In addition, there may be litigation costs due to credit for time served not being granted along with potential monetary settlements if credit for time served is not given.

❖**LOCAL GOVERNMENTS:** Many offenders are housed in county jails, and without the ability to grant credit for time served lengths of incarceration of offenders housed in jail could be longer.

❖**OTHER PERSONS:** Offenders would remain incarcerated longer than what justice and equity require.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Unless this rule is implemented offenders may be required to spend additional time incarcerated which could affect opportunities

to rehabilitate such as education, employment, therapy, and the ability to pay restitution.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not have a direct negative fiscal impact on business.

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

Pardons (Board of) Administration No. 300 448 East 6400 South Murray, UT 84107, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

John Green at the above address, by phone at (801) 261-6470, by FAX at (801) 261-6481, or by Internet E-mail at bpmain.jgreen@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Michael R. Sibbett, Chairman

**R671. Pardons (Board of), Administration.**

**R671-205. Credit for Time Served.**

**R671-205-1. Policy.**

(1) Credit for time served will be granted against the expiration date on a crime of commitment when:

(a) a conviction is set aside and there is a subsequent commitment for the same criminal conduct;

(b) a commitment is made to the Utah State Hospital pursuant to a "guilty and mentally ill" conviction;

(c) time is spent in custody outside the State of Utah based solely on the Utah warrant;

(d) the Board deems such credit just under the circumstances;

or (e) credit is otherwise required by law.

(2) No credit will be given for time spent in custody at the Utah State Hospital or comparable non-prison, psychiatric facility while the offender is judicially-declared incompetent.

(3) If no record of official detention time is found in the Board file, the Board will presume that none was served. In cases where the offender desires credit, the burden is on the offender to request it and to provide copies of records supporting the claim of time spent in custody.

**KEY: capital punishment, prison release, parole, government hearings**

**September 15, 1998**

77-27-7

77-27-9

77-19-7



Pardons (Board of), Administration  
**R671-312**  
Commutation Hearings for Death  
Penalty Cases

**NOTICE OF PROPOSED RULE**

(New)

DAR FILE No.: 21313

FILED: 07/17/1998, 13:01

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Provides the process to be used in commutation hearings in death penalty cases.

SUMMARY OF THE RULE OR CHANGE: Outlines the procedure to be used by the Board for commutation hearings in death penalty cases.

**(DAR Note:** A corresponding 120-Day (Emergency) Rule that is effective as of July 17, 1998 is found under DAR No. 21312 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-19-7, and Article VII, Section 12, Utah Constitution

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Without a constitutional procedure being outlined on how to proceed in commutation hearings in death penalty cases the state would be subject to law suits which could result in legal fees and possible punitive and compensatory damages being awarded. The Board budgets \$2,500 per commutation hearing that is set aside in our legal contract not anticipating more than two commutation hearings in any given fiscal year.

❖LOCAL GOVERNMENTS: None--this rule only affects state government.

❖OTHER PERSONS: Offenders are entitled to constitutionally protected rights which could have a fiscal impact on them if they are not outlined in administrative rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Unless this rule is implemented, offenders may not know how to proceed which could increase legal fees and reduce their opportunity to present issues before the Board.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not have a negative fiscal impact on business.

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

Pardons (Board of) Administration No. 300 448 East 6400 South Murray, UT 84107, or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

John Green at the above address, by phone at (801) 261-6470, by FAX at (801) 261-6481, or by Internet E-mail at bpmain.jgreen@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Michael R. Sibbett, Chairman

**R671. Pardons (Board of), Administration.****R671-312. Commutation Hearings for Death Penalty Cases.****R671-312-1. Applicability of Rules to Petitioners.**

The limitations on the authority of the Board that are imposed by Utah Code Ann. Section 77-27-5 (Supp. 1994) do not apply to a commutation proceeding pertinent to any person sentenced to the death penalty before April 27, 1992. Procedures applicable to commutation hearings of pre-April 27, 1993 death penalty inmates will be governed by Section R671-312-2. Procedures to be used in the commutation hearing of any person sentenced to the death penalty after April 26, 1992 are governed by Section R671-312-3.

**R671-312-2. Commutation Procedures Applicable to Inmates Sentenced to Death Before April 27, 1992.**

(1) A petition for commutation may be filed anytime after the sentencing court has issued an order of execution after completion of the inmate's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack. The inmate shall file his petition no later than seven days after the sentencing court signs a warrant setting a new execution date. The inmate shall mail a copy, by U.S. Mail, postage prepaid, to the attorney representing the state. If the execution date is stayed by any court between the time of the sentencing court's issuance of the warrant and the beginning of the commutation hearing, the commutation proceeding shall terminate. If the execution date is stayed during the commutation hearing, the hearing shall continue and the Board shall render its decision in accordance with this rule.

(2) The petition shall include:

(a) the petitioner's name and address of any attorney who is requesting the petitioner in the commutation proceeding;

(b) a statement of reasons why the petitioner believes the sentence of death should be commuted;

(c) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses it intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition will include a statement reciting what, if any, new and significant information exists currently and why the information requires a new hearing.

(4) The Board may temporarily stay an execution to fully hear the petition for commutation.

(5) Within seven days of receiving the petition, the Attorney General or County Attorney shall send the Board and the petitioner copies of written evidence, names of witnesses, and summary of

anticipated testimony that he intends to rely on to rebut petitioner's claim that the sentence of death should be commuted. The Board may request either the petitioner or the state to provide additional information.

(6) The day after receiving the state's response, the Board will hold a pre-hearing conference to limit the number of witnesses that each side calls, clarify the issues that will be addressed, and take whatever other action it considers necessary and appropriate to control and direct the proceedings.

(7) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the inmate, the inmate's representative, or the state's representative. The role of the state's representative is limited to rebutting the petitioner's claim and otherwise assisting the Board to determine all facts relevant to the inquiry.

(8) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case. The Board will record the commutation hearing in accordance with Utah Code Ann. Section 77-27-8(2). The Board's policy on News Media and Public Access will govern attendance. During the hearing, the Board may take whatever actions it considers necessary and appropriate to maintain order.

(9) The Board will reconvene in open session to announce and distribute its written decision.

**R671-312-3. Commutation Procedures Applicable to Persons Sentenced to Death After April 27, 1992.**

(1) A petition for commutation may be filed anytime after the sentencing court has issued an order of execution after completion of the inmate's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack. The inmate shall file his petition no later than 23 days before the scheduled execution date and shall mail a copy by U.S. Mail, postage prepaid, to the attorney representing the state. If the execution date is stayed by any court between the time of the sentencing court's issuance of the warrant and the beginning of the commutation hearing, the commutation proceeding will terminate. If the execution date is stayed during the commutation hearing, the hearing will continue and the Board will render its decision in accordance with this rule.

(2) The petition shall include:

(a) the petitioner's name and address of any attorney who is requesting the petitioner in the commutation proceeding;

(b) a statement of reasons why the petitioner believes the sentence of death is not appropriate due to the specific circumstances pertinent to him;

(c) whether any of the reasons stated as grounds for the have been reviewed in the judicial process;

(d) if new information is alleged, a statement why the information is considered new, why it could not have been reviewed in the judicial process, and why the information is not still subject to judicial review;

(e) if legal or constitutional reasons are claimed, a statement explaining why Utah Code Ann. Section 77-27-5.5(6) does not prohibit the Board from considering the issue; and

(f) if petitioner has received one commutation hearing, the petition shall include a statement explaining what, if any, new and significant information exists that justifies a second hearing; and



(g) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses it intends to call and a summary of their anticipated testimony.

(2) If the Board believes that it cannot consider the claims pursuant to section 77-27-5.5, it will deny the petition for a hearing, determining that it does not present a substantial issue.

(3) If the Board grants the petition, a commutation hearing shall be scheduled as soon as reasonably possible.

(4) The Board may temporarily stay an execution to fully hearing the petition for commutation.

(5) Within seven days of receiving the petition, the Attorney General or County Attorney shall provide to the Board and the petitioner copies of all written evidence, names of witnesses, and summary of anticipated testimony. The Board may request additional information from either side.

(6) The day after receiving the state's response, the Board shall hold a pre-hearing conference to limit the number of witnesses that each side calls, clarify the issues that will be addressed, and take whatever other action it considers necessary and appropriate to control and direct the proceedings.

(7) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the inmate, the inmate's representative, and the state's representative. The role of the State's representative is limited to rebutting petitioner's claim that his sentence should be commuted and otherwise assisting the board to determine all facts relevant to the inquiry and petitioner's claims.

(8) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case. The Board will record the commutation hearing in accordance with Utah Code Ann. Section 77-27-8(2). The Board's policy on News Media and Public Access will govern attendance. During the hearing, the Board may take whatever actions it considers necessary and appropriate to maintain order.

(9) The Board will reconvene in open session to announce and distribute its written decision.

**KEY: capital punishment  
September 15, 1998**

**77-19-7  
Art VII, Sec 12**



**Tax Commission, Administration  
R861-1A-9  
Tax Commission as Board of  
Equalization Pursuant to Utah Code  
Ann. Sections 59-2-212, 59-2-1003,  
and 59-2-1011**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21321

FILED: 07/27/1998, 10:52

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-1004 provides that taxpayers dissatisfied with the valuation of their real property may appeal that valuation to the county board of equalization but does not provide that necessary level of detail for the county board's dismissal for lack of jurisdiction, timeliness, or sufficient evidence.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment clarifies procedures of the county boards of equalization and outlines the rules for dismissing appeals for lack of jurisdiction, lack of timeliness, and lack of sufficient evidence to support a claim for relief.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-2-212, 59-2-1004, and 59-2-1006

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no additional costs or savings as a result of this rule--it clarifies the criteria for appeals being dismissed from the County Boards of Equalization prior to going to state.

❖LOCAL GOVERNMENTS: There are no additional costs or savings as a result of this rule--it clarifies the criteria for appeals being dismissed from the County Boards of Equalization prior to going to state.

❖OTHER PERSONS: There are no additional costs or savings as a result of this rule--it clarifies the criteria for appeals being dismissed from the County Boards of Equalization prior to going to state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Statute requires taxpayers to exhaust appeal procedures at the local level first. This rule will clarify those procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact; this rule simply requires that local remedies be exhausted before moving appeals to the state level.

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

Tax Commission  
Administration  
Tax Commission Building  
210 North 1950 West  
Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3902, by FAX at (801) 297-3919, or by Internet E-mail at phendric@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 9/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 9/15/1998

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R861. Tax Commission, Administration.**

**R861-1A. Administrative Procedures.**

**R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, ~~59-2-1003, and 59-2-1011~~ 59-2-1004, and 59-2-1006.**

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property ~~[which]that~~ has been overassessed, underassessed, or nonassessed as described in ~~[Utah Code Ann.]~~Section 59-2-212~~;~~, and as a board of appeal from the various county boards of equalization ~~[as]~~described in ~~[Utah Code Ann.]~~ Section 59-2-1011.

B. Proceedings. ~~[A presiding officer may sit as the State Board of Equalization with the same force and effect as if the entire Commission were present. Any order will be signed by a quorum of the Commission after they have become familiar with the evidence and have reviewed the legal arguments of the parties with the presiding officer.]~~In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from ~~[County Boards]~~county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a ~~[County Board of Equalization]~~county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

~~[D. Remand of Insufficient Appeal. The Commission may remand an appeal to the County Board of Equalization if:~~

~~1. the minutes of the county board fail to conform with the requirements of Rule R861-1A-9.E, or~~

~~2. in the interest of effective tax administration the matter can best be resolved by the county board;~~

~~The Commission shall notify the county board of the order and the county board shall schedule a rehearing on the appeal within 20 days of the issuance of the notice.~~

~~E. Minutes of the County Board.]~~

4. ~~The [County Board of Equalization]~~county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall ~~[include:]~~constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

~~[1:]~~(1) the name and address of the property owner;

~~[2:]~~(2) the identification number, location, and description of the property;

~~[3:]~~(3) the value placed on the property by the assessor;

~~[4:]~~(4) the basis stated in the taxpayer's appeal;

~~[5:]~~(5) facts and issues raised in the hearing before the county board ~~[which]that~~ are not clearly evident from the assessor's records; and

~~[6:]~~(6) the decision of the ~~[County Board of Equalization]~~county board of equalization and the reasons for the decision.

~~[b]~~ Exempt Property. ~~[The County Board of Equalization shall, in accordance with Utah Code Ann. Sections 59-2-1003 and 59-2-1011, with respect to a decision affecting the exempt status of a property,]With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.~~

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of sufficient evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. A case may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a) was improper; or

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's:

(1) estimate of fair market value; or

(2) position that the assessed value of the taxpayer's property is not equalized with comparable properties.

8. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

9. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.7.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of sufficient evidence to support a claim for relief.

10. If the minimum information required under C.7. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.7.e), the county board of equalization shall render a decision on the merits of the case.

[— G. Manner of Conducting Proceedings. Except as otherwise provided by law or these rules, the provisions of Rules R861-1A-4, R861-1A-5, R861-1A-6, and R861-1A-7 shall be applicable to proceedings before the State Board of Equalization:

— H. Definition of Statement "Within Ten Days" as Referred to in Utah Code Ann. Section 59-2-1011. The term "within ten days after the final action of the county board," as used in Utah Code Ann. Section 59-2-1011, means that a taxpayer shall have ten days, exclusive of weekends and holidays, from the date the county auditor mails the decision of the County Board of Equalization to the taxpayer, to appeal that decision to the State Board of Equalization. For purposes of Utah Code Ann. Section 59-2-1011, the taxpayer's appeal shall be considered to have been filed on:

- 1. the date the notice of appeal which is mailed to the county auditor's office is postmarked, or
- 2. the date hand-delivered to the county auditor's office, or
- 3. a notice filed by the taxpayer shall be presumed to have been timely filed unless the county auditor provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the County Board of Equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the County Board of Equalization at which the decision was made.]

**KEY: taxation**  
**[May 4,]1998**  
**Notice of Continuation May 20, 1997**

**59-1-212**  
**59-1-1004**  
**59-2-1006**



# Tax Commission, Auditing

## R865-6F-33

### Taxation of Telecommunications

#### Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21322

FILED: 07/27/1998, 10:52

RECEIVED BY: NL

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-7-319 requires that receipts from sales other than sales of tangible personal property shall be included in this state's sales factor if the income-producing activity occurs in this state. The proposed rule indicates when income-producing activity occurs in this state in the case of telecommunications.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment indicates when receipts derived from charges for telephone services are properly included in the sales' factor of the Utah Uniform Division for Income Tax Process Act (UDITPA) formulas.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-7-302 through 59-7-321

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The provisions of this rule reflect industry practice as well as Tax Commission practice.
  - ❖ LOCAL GOVERNMENTS: The provisions of this rule reflect industry practice as well as Tax Commission practice.
  - ❖ OTHER PERSONS: The provisions of this rule reflect industry practice as well as Tax Commission practice.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: Any compliance costs by affected parties would appear to be minimal and only related to adapting their information gathering or accumulating to the provisions spelled out in the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact-the rule defines terms and gives guidance, and reflects current practice.

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

Tax Commission  
Auditing  
Tax Commission Building  
210 North 1950 West

Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Pam Hendrickson at the above address, by phone at (801) 297-3902, by FAX at (801) 297-3919, or by Internet E-mail at phendric@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-6F. Franchise Tax.**

**R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

**A. Definitions.**

1. "Call" means a specific telecommunications transmission as described in A.6.

2. "Channel termination point" means the point at which information can enter or leave the telecommunications network.

3. "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

4. "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

5. "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

6. "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

7. "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

**B. Apportionment and Allocation.**

1. A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this

rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

3. Except as otherwise provided in this rule, the property factor shall be determined in accordance with Tax Commission rule R865-6F-8(G), the payroll factor in accordance with rule R865-6F-8(H) and the sales factor in accordance with rule R865-6F-8(I).

**C. Property Factor.**

1. Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(G).

**D. Sales Factor Numerator.**

1. The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

a) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

b) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

c) receipts derived from charges for individual toll calls that originate and terminate in Utah;

d) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

e) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

2. Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

a) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

b) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

**KEY: taxation**  
~~[December 23, 1997]~~1998 59-7-301 through 59-7-321  
Notice of Continuation April 10, 1997



Tax Commission, Auditing  
**R865-19S-20**  
Basis for Reporting Tax Pursuant to  
Utah Code Ann. Section 59-12-107

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE No.: 21323  
FILED: 07/27/1998, 10:52  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-107 allows credit for taxes paid on the portion of the purchase price remaining unpaid at the time of a repossession.

SUMMARY OF THE RULE OR CHANGE: This amendment corrects an example directing how to calculate the sales tax credit for repossessions. Since trade-ins are subtracted to arrive at the original amount subject to tax, it is incorrect to subtract the trade-in a second time in step (2) of the example.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-107

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: No cost because the amendment tracks the actual practice.
- ❖LOCAL GOVERNMENTS: No cost because the amendment tracks the actual practice.
- ❖OTHER PERSONS: No cost because the amendment tracks the actual practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost because the amendment tracks the actual practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business as this rule simply corrects language in an example referred to in the rule.

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

Tax Commission  
Auditing

Tax Commission Building  
210 North 1950 West  
Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Pam Hendrickson at the above address, by phone at (801) 297-3902, by FAX at (801) 297-3919, or by Internet E-mail at phendric@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 9/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 9/15/1998

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**  
**R865-19S. Sales and Use Tax.**  
**R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.**

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Justified adjustments may be made and credit allowed for cash discounts, returned goods, bad debts, and repossessions that result from sales upon which the tax has been reported and paid in full by retailers to the Tax Commission.

1. Adjustments and credits will be allowed only if the retailer has not reimbursed himself in the full amount of the tax except as noted in ~~(C.6.a.)~~(C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off, or the repossession occurs.

3. Any refund or credit given to the purchaser must include the related sales tax.

4. Sales tax credits for bad debts are allowable only on accounts determined to be worthless and actually charged off for income tax purposes. Recoveries made on bad debts and repossessions for which credit has been claimed must be reported and the tax paid.

5. Sales tax credit for repossessions is allowable on the basis of the original amount subject to tax, less down payment. This amount is multiplied by the ratio of the number of monthly payments not made, divided by the total number of monthly payments required by the contract.

a) For example: the credit allowed on a taxable \$30,000 car sale with a \$5,000 down payment financed on a 60-month contract and repossessed after 20 full payments were made would be \$16,667 as computed and shown below. The number of unpaid full payments is determined by dividing the total received on the contract by the monthly payment amount.

TABLE

Example:

(1) Original amount subject to tax	\$30,000
(2) Down payment [ <del>on trade-in</del> ]	(5,000)
(3) Balance of taxable base financed	25,000
(4) Number of full payments unpaid at the time of repossession	40
(5) Total contract period (no. of months)	60

Line 4 divided by line 5 times taxable base financed equals repossession credit

$$(40/60) \times \$25,000 = \$16,667$$

b) In cases where a contract assignment creates a partial (part of the loan amount) recourse obligation to the seller, any repossession credit must be calculated in the same manner as shown above.

c) The credit for repossession shall be reported on the dealer's or vendor's sales tax return with an attached schedule showing computations and appropriate adjustments for any tax rate changes between the date of sale and the date of repossession.

6. Credit for tax on repossessions is allowed only to the selling dealer or vendor.

a) This does not preclude arrangements between the dealer or vendor and third party financial institutions wherein sales tax credits for repossessions by financial institutions may be taken by the dealer or vendor who will in turn reimburse the financial institution.

b) In the event the applicable vehicle dealer is no longer in business, and there are no outstanding delinquent taxes, the third party financial institution may apply directly to the Tax Commission for a refund of the tax in the amount that would have been credited to the dealer.

D. Adjustments in sales price, such as allowable discounts or rebates, cannot be anticipated. The tax must be based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the credit is claimed, the tax credit must be determined and deducted rather than deducting the sales price adjustments.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

**KEY: sales tax**  
~~[November 5, 1997]~~1998 59-12  
 Notice of Continuation May 22, 1997



Tax Commission, Auditing  
**R865-20T-10**  
 Procedures for the Renewal and  
 Reinstatement of License Issues  
 Pursuant to Utah Code Ann. Section  
 59-14-202

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE No.: 21324  
 FILED: 07/27/1998, 10:52  
 RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 59-14-202 requires the Tax Commission to establish, by rule, procedures for the renewal and reinstatement of cigarette and tobacco products licenses.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule indicates the procedures for renewal and reinstatement of the cigarette and tobacco products license.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-14-202

**ANTICIPATED COST OR SAVINGS TO:**

- ❖THE STATE BUDGET: No cost associated with this rule. All costs were considered in the fiscal note for 1998 S.B. 39.
- ❖LOCAL GOVERNMENTS: No cost associated with this rule. All costs were considered in the fiscal note for 1998 S.B. 39.
- ❖OTHER PERSONS: No cost associated with this rule. All costs were considered in the fiscal note for 1998 S.B. 39. (**DAR Note:** S.B. 39 is found at 1998 Utah Laws 319, and was effective May 4, 1998.)

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Licensee will be required to pay renewal and, perhaps, reinstatement fees required by statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no additional costs as a result of this rule, since the renewal and reinstatement fees are statutory. This rule implements the statute.

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

Tax Commission  
 Auditing  
 Tax Commission Building  
 210 North 1950 West  
 Salt Lake City, UT 84134, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Pam Hendrickson at the above address, by phone at (801) 297-3902, by FAX at (801) 297-3919, or by Internet E-mail at phendric@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-20T. Tobacco Tax.**

**R865-20T-10. Procedures for the Renewal and Reinstatement of Licenses Issued Pursuant to Utah Code Ann. Section 59-14-202.**

A. In order to renew a license issued under Sections 59-14-202 and 59-14-301, a licensee shall file form TC-38B, Cigarette and Tobacco Products License Renewal Application, with the Tax Commission on or before the last day of the month prior to the month in which the license expires.

1. The form shall be accompanied by the statutory renewal fee.

B. In order to reinstate a license revoked or suspended, or allowed to expire, a licensee shall file form TC-69, Utah State Business and Tax Registration, with the Tax Commission.

1. The form shall be accompanied by the statutory reinstatement fee.

C. A revoked or suspended license may not be reinstated prior to the expiration of the revocation or suspension period.

**KEY: taxation, tobacco products**

**[November 19, 1996]1998**

**59-14-202**

**Notice of Continuation May 22, 1997**



**Tax Commission, Motor Vehicle**

**R873-22M-39**

**Special Mobile Equipment Pursuant to Utah Code Ann. Section 41-1a-102**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 21325

FILED: 07/27/1998, 10:52

RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 41-1a-102 defines special mobile equipment incidentally operated or moved over the highways. The Tax Commission has found this language to be vague and has unevenly applied it to vehicles. The proposed amendment will make administration equitable.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment states that a vehicle does not qualify as special mobile equipment if it can reach 45 m.p.h. and is constructed from a truck cab and chassis. The proposed amendment also indicates that current affidavits issued for special mobile equipment expire on 03/30/99.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1A-102

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Slight increase--it is estimated that approximately 1200 vehicles have been granted this status over the past 8 - 10 years. Vehicles that no longer qualify under the new rule would be required to pay registration fees and special fuel taxes.

❖LOCAL GOVERNMENTS: Slight increase based on payment of personal property tax if the vehicle was not listed with personal property affidavit in previous year.

❖OTHER PERSONS: Slight increase based on payment of registration fees and special fuel taxes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A vehicle that no longer qualifies as special mobile equipment will be required to pay registration fees and special fuel taxes for on road use of special fuel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be yearly registration fees, as well as special fuel tax in some instances, due on the equipment that no longer qualifies as Special Mobile Equipment.

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

Tax Commission  
Motor Vehicle  
Tax Commission Building  
210 North 1950 West  
Salt Lake City, UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3902, by FAX at (801) 297-3919, or by Internet E-mail at phendric@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R873. Tax Commission, Motor Vehicle.**

**R873-22M. Motor Vehicle.**

**R873-22M-39. Special Mobile Equipment Pursuant to Utah Code Ann. Section 41-1a-102.**

A. Special mobile equipment does not include a vehicle that is:

1. self-propelled and capable of reaching speeds of 45 miles per hour or more; and

2. constructed from a truck cab and chassis.

B. An Affidavit of Special Mobile Equipment, form TC-845, issued prior to January 1, 1999 shall expire on March 30, 1999.

C. The owner of a vehicle for which form TC-845 expires pursuant to B. may reapply for special mobile equipment status of the vehicle if the vehicle satisfies the conditions of this rule.

D. The provisions of this rule become binding on taxpayers beginning January 1, 1999.

**KEY: taxation, motor vehicles, aircraft, license plates**  
**[~~October 21, 1997~~1998 41-1a-102**  
**Notice of Continuation May 8, 1997**



Tax Commission, Property Tax  
**R884-24P-52**  
 Criteria for Determining Primary  
 Residence Pursuant to Utah Code Ann.  
 Sections 59-2-102 and  
 59-2-103

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 21326  
 FILED: 07/27/1998, 10:52  
 RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-103 provides for a residential exemption on up to one acre of land per residential unit.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment provides additional guidelines concerning the administration of the residential. The purpose of the amendment is to increase greater consistency in the administration of the exemption at the county level.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-2-102 and 59-2-103

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: There could be a slight property tax reduction because of the change affecting buildings under construction in some counties where they were not previously given the residential exemption.
  - ❖LOCAL GOVERNMENTS: There could be a slight property tax reduction because of the change affecting buildings under construction in some counties where they were not previously given the residential exemption.
  - ❖OTHER PERSONS: Slight property tax savings for a limited number of homeowners. Amendments will ensure that all property eligible for the exemption receives it. A few homeowners were not receiving the exemption for the whole parcel of land (up to 1 acre) in their residential unit.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs. County Assessors will be coding residential properties uniformly as a result of this rule to insure intracounty equity.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There could be a savings to the owner of a project under construction on lien date if the structure will qualify for primary residential exemption when complete.

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

Tax Commission  
 Property Tax  
 Tax Commission Building  
 210 North 1950 West  
 Salt Lake City, UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Pam Hendrickson at the above address, by phone at (801) 297-3902, by FAX at (801) 297-3919, or by Internet E-mail at phendric@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R884. Tax Commission, Property Tax.**  
**R884-24P. Property Tax.**  
**R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103.**

- A. "Household" is as defined in Section 59-2-1202.
- B. "Primary residence" [~~is defined as~~means] the location where domicile has been established.
- C. Except as provided in D, the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.
- D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
- E. Factors or objective evidence determinative of domicile include:
  1. whether or not the individual voted in the place he claims to be domiciled;
  2. the length of any continuous residency in the location claimed as domicile;
  3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
  4. the presence of family members in a given location;
  5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
  6. the physical location of the individual's place of business or sources of income;
  7. the use of local bank facilities or foreign bank institutions;



- 8. the location of registration of vehicles, boats, and RVs;
- 9. membership in clubs, churches, and other social organizations;
- 10. the addresses used by the individual on such things as:
  - a) telephone listings;
  - b) mail;
  - c) state and federal tax returns;
  - d) listings in official government publications or other correspondence;
  - e) driver's license;
  - f) voter registration; and
  - g) tax rolls;
- 11. location of public schools attended by the individual or the individual's dependents;
- 12. the nature and payment of taxes in other states;
- 13. declarations of the individual:
  - a) communicated to third parties;
  - b) contained in deeds;
  - c) contained in insurance policies;
  - d) contained in wills;
  - e) contained in letters;
  - f) contained in registers;
  - g) contained in mortgages; and
  - h) contained in leases.
- 14. the exercise of civil or political rights in a given location;
- 15. any failure to obtain permits and licenses normally required of a resident;
- 16. the purchase of a burial plot in a particular location;
- 17. the acquisition of a new residence in a different location.

**End of the Notices of Proposed Rules Section**

F. Administration of the Residential Exemption.

1. Except as provided in F.2., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. A property that otherwise qualifies for the residential exemption shall not lose the exemption if the property is temporarily unoccupied.

**KEY: taxation**

**[December 23, 1997]1998**

**59-2-102**

**Notice of Continuation May 8, 1997**

**59-2-103**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends September 14, 1998. At its option, the agency may hold public hearings.

From the end of the waiting period through November 29, 1998, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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**The Changes in Proposed Rules Begin on the Following Page.**

Health, Health Systems Improvement,  
Health Facility Licensure  
**R432-100**  
General Hospital Standards

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 21036  
FILED: 07/30/1998, 10:00  
RECEIVED BY: NL

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments to the proposed rule are a result of comments and discussion received during the formal hearing comment period.

**SUMMARY OF THE RULE OR CHANGE:** The term "governing body" is replaced with the term "the board" throughout the rule. Redundant wording requiring licensed personnel to be licensed, certified, or registered through The Division of Occupational and Professional Licensing (DOPL) is deleted. Deleted "demonstrated skills" requirement for initial applicants to the medical staff in Subsection R430-100-7(8). Adds wording to require written instructions upon patient discharge only as follow-up care is needed in Subsection R430-100-12(3). Deletes requirement in Section R430-100-11 to provide a written statement of patient rights to each patient. Modifies Subsection R430-100-15(1)(b) to require medical direction for anesthesia services to be provided by a member of the medical staff. Modifies Subsection R430-100-15(1)(c) to require both the patient and the surgeon to be notified of who is to provide anesthesia. Adds compliance with 42 CFR 482.52(a) for Medicaid certified hospital in Subsection R430-100-15(1). Undeletes requirement in Subsection R430-100-18(1) to establish a pediatric unit interdisciplinary committee. Deletes "elected" from medical staff appointment of Lab/Pathology medical director in Subsection R430-100-22(1)(b). Adds Health Care Financing Administration (HCFA) approved accrediting organization inspections as meeting Lab/Pathology section requirements in Section R430-100-22. Adds language to clarify that Section R430-100-30, "Pet Therapy" is an optional service. Clarifies language in Subsection R430-100-33(5)(j) that requires completed Anatomical Gift Act documentation for each deceased patient record. Deletes Subsection R430-100-35(2)(c) as handling of all soiled linen is subject to universal precautions. Adds language to Section R430-100-35 to distinguish between hospital-based and contracted linen services. Deletes the requirement in Subsection R430-100-33(5)(j) for the hospital to document the address of the person or agency who receives a newborn infant to be adopted. Deletes the requirement in Subsection R430-100-33(5)(j) to keep a copy of the mother's delivery record in the infant's medical record in cases of adoption where the mother's identity is confidential. Modifies required hospital laundering of employee scrubs in Subsection R430-100-35(4)

to include only surgery and other areas as required by the Occupational Safety and Health Administration (OSHA). Adds requirement for posting of fire evacuation plan in Subsection R430-100-38(5).

**(DAR Note:** The original proposed amendment upon which this change in proposed rule is based was published in the May 15, 1998, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 482.52(a)

**ANTICIPATED COST OR SAVINGS TO:**

❖**THE STATE BUDGET:** This change in proposed rule imposes no additional costs beyond those identified in the original proposed rule published in the May 15, 1998, *Bulletin*.

❖**LOCAL GOVERNMENTS:** No anticipated costs as enforcement of this rule does not apply to local governments.

❖**OTHER PERSONS:** Hospitals who previously had laundered employee scrubs in other areas than surgery and areas identified by OSHA will realize a cost savings. There is no way to estimate how many of the 45 hospitals this will apply to. Hospitals who had previously provided a written statement of patient rights will realize a savings in printing cost of hospital forms. There is no anticipated cost to the providers who operate as licensed general acute hospitals.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This change in proposed rule imposes no additional cost beyond those identified in the original proposed rule published in the May 15, 1998, *Bulletin*. Savings may be realized through the elimination of laundering scrubs for staff and reducing the written patient rights form.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Based on public comments received with regard to the previous proposed rule, the Bureau of Health Facility Licensure proposes a modified rule which incorporates many of the comments received. The Bureau is commended for its responsiveness and willingness to work with the community of health care providers impacted by this rule change. Many of the comments concerned the scope of practice for nurse anesthetists (CRNAs). Many physicians were concerned that patient safety would be compromised if CRNAs could practice autonomously. Meetings confirm that Medicare/Medicaid have national standards governing the scope of practice for CRNAs. The proposed rule change requires compliance with these standards. The Bureau believes this is a compromise acceptable to all persons impacted by this rule, but will again evaluate this issue based on public comment that may be received. I believe that the other changes proposed appropriately respond to public comment and that the fiscal impact on businesses has been minimized as much as possible. Indeed, the proposed changes will lessen the impact on business. In the event that public comment identifies additional areas where costs and impacts could be lessened, the Bureau will carefully evaluate the proposals and this rule before it becomes final.

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

Health  
Health Systems Improvement,  
Health Facility Licensure  
Cannon Health Building  
288 North 1460 West  
PO Box 142003  
Salt Lake City, UT 84114-2003, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/14/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/1998

AUTHORIZED BY: Rod L. Betit, Executive Director

**R432. Health, Health Systems Improvement, Health Facility Licensure.**

**R432-100. General Hospital Standards.**

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**R432-100-3. Construction, Facilities, and Equipment Standards.**

~~(1)~~ Hospitals shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.

.....

**R432-100-5. Governing Body.**

(1) Each licensed hospital shall have a governing body hereinafter called the board.

(2) The board shall be legally responsible for the conduct of the hospital. The board is also responsible for the appointment of the medical staff.

(3) The board shall be organized in accordance with the Articles of Incorporation or Bylaws.

- (a) The Articles or Bylaws shall specify:
  - (i) ~~The~~the duties and responsibilities of the board;
  - (ii) ~~The~~the method for election or appointment to the board;
  - (iii) ~~The~~the size of the board;
  - (iv) ~~The~~the terms of office of the board;
  - (v) ~~The~~the methods for removal of board members and officers;
  - (vi) ~~The~~the duties and responsibilities of the officers and any standing committees;
  - (vii) ~~The~~the numbers or percentages of members that constitute a quorum for board meetings;
  - (viii) ~~The~~the board's functional organization, including any standing committees;

(ix) ~~To~~to whom responsibility for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated;

(x) ~~The~~the methods established by the board for holding such individuals responsible;

(xi) ~~The~~the mechanism for formal approval of the organization, bylaws, rules of the medical staff and hospital departments; and

(xii) ~~The~~the frequency of meetings.

(4) The board shall meet not less than quarterly, and shall keep written minutes of meetings and actions, and distribute copies to members of the board.

(5) The board shall employ a competent executive officer or administrator and vest this person with authority and responsibility for carrying out board policies. The administrator's qualifications, responsibilities, authority, and accountability shall be defined in writing.

(6) The board, through its officers, committees, medical and other staff, shall:

- (a) ~~Develop~~develop and implement a long range plan;
- (b) ~~Appoint~~appoint members of the medical staff and delineate their clinical privileges;
- (c) ~~Approve~~approve organization, bylaws, and rules of medical staff and hospital departments; and
- (d) ~~Maintain~~maintain a list of the scope and nature of all contracted services.

.....

**R432-100-7. Medical and Professional Staff.**

(1) Each hospital shall have an organized medical and professional staff that operates under bylaws approved by the ~~governing body~~board.

(2) The medical and professional staff shall advise and be accountable to the ~~governing body~~board for the quality of medical care provided to patients.

(3) The medical and professional staff must adopt bylaws and policies and procedures to establish and maintain a qualified medical and professional staff including current licensure, relevant training and experience, and competency to perform the privileges requested. The bylaws shall address:

- (a) ~~The~~the appointment and re-appointment process;
- (b) ~~The~~the necessary qualifications for membership;
- (c) ~~The~~the delineation of privileges;
- (d) ~~The~~the participation and documentation of continuing education; and
- (e) ~~A~~a fair hearing and appeals process.

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state.

(5) An applicant for staff membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff membership must be oriented to the bylaws and must agree in writing to abide by all conditions.

(8) The medical and professional staff shall review each applicant and grant privileges based on the scope of their license and ~~[demonstrated skills and]~~abilities.

(9) The medical and professional staff shall review appointments and re-appointments to the medical and professional staff at least every two years.

#### **R432-100-8. Personnel Management Service.**

(1) The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.

(2) There shall be written policies, procedures, and performance standards that include:

(a) ~~[Job]~~job descriptions for each position or employee;

(b) ~~[Periodic]~~periodic employee performance evaluations;

(c) ~~[Employee]~~employee health screening, including Tuberculosis testing in accordance with R386-702, The Communicable Disease Rule;

(d) ~~[Policies]~~policies to ensure that all employees receive unit specific training;

(e) ~~[Policies]~~policies to ensure that all hospital direct care staff receive continued competency training in current patient care practices;

(f) ~~[Policies]~~policies to ensure that all hospital direct care staff have current ~~[CPR]~~cardiopulmonary resuscitation certification; and

(g) ~~[Policies]~~policies to ensure that OSHA regulations regarding Blood Borne Pathogens are implemented and followed.

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce[-

~~(4) The personnel department shall ensure that all personnel are licensed, certified or registered]~~ within 45 days of employment.

~~(5)(4)~~ A copy of the current certificate, license or registration shall be available for Department review.

~~(6)(5)~~ All direct care and housekeeping staff shall receive annual documented inservice training in the requirements for reporting abuse, neglect, or exploitation of children or adults.

~~(7)(6)~~ Volunteers may be utilized in the daily activities of the hospital, but shall not be included in the hospital staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened and supervised according to hospital policy.

(b) Volunteers shall be familiar with hospital volunteer policies, including patient rights and hospital emergency procedures.

~~(8)(7)~~ If the hospital participates in a professional graduate education program, there shall be policies and procedures specifying the patient care responsibilities and supervision of the graduate education program participants.

#### **R432-100-9. Quality Improvement Plan.**

(1) The Board shall ensure that there is a well-defined quality improvement plan designed to improve patient care.

(2) The plan shall be consistent with the delivery of patient care.

(3) The plan shall be implemented and include a system for the collection of indicator data.

(a) The plan shall include an incident reporting system to identify problems, concerns, and opportunities for improvement of patient care.

(b) Incident reports shall be available for Department review.

(c) A system shall be implemented for assessing identified problems, concerns, and opportunities for improvement.

(4) The plan shall implement actions that are designed to eliminate identified problems and improve patient care.

(5) Each hospital shall maintain a quality improvement committee. The quality improvement committee shall keep and make available for Department review written minutes documenting corrective actions and results. ~~[-Documentation shall be available for Department review.]~~

(6) The quality improvement committee shall report findings and concerns at least quarterly to the board, the medical staff, and the administrator[-and governing body].

(7) Infection reporting shall be integrated into the quality improvement plan, and shall be reported to the Department in accordance with R386-702 Communicable Diseases.

#### **R432-100-10. Infection Control.**

~~[There shall be]~~Each hospital must implement a hospital-wide infection control program.

(1) The infection control program shall include at least the following:

(a) ~~[Definitions]~~definitions of nosocomial infections;

(b) ~~[A]~~a system for reporting, evaluating, and investigating infections;

(c) ~~[Review]~~review and evaluation of aseptic, isolation, and sanitation techniques;

(d) ~~[Methods]~~methods for isolation in relation to the medical condition involved;

(e) ~~[Preventive]~~preventive, surveillance, and control procedures;

(f) ~~[Laboratory]~~laboratory services;

(g) ~~[An]~~an employee health program;

(h) ~~[Orientation]~~orientation of all new employees; and

(i) ~~[Documented]~~documented in-service education for all departments and services relative to infection control.

(2) Infection control reporting data shall be incorporated into the hospital quality improvement process.

(3) There shall be written infection[-]control policies and procedures for each area of the hospital, including requirements dictated by the physical layout, personnel and equipment involved.

(4) There shall be written policies for the selection, storage, handling, use, and disposition of disposable or reusable items. Single-use items may be reused according to hospital policy.

(a) Reusable items shall have specific policies and procedures for each type of reuse item.

(b) Reuse data shall be incorporated into the quality improvement process.

(c) Reuse data shall be incorporated in the hospital infection control identification and reporting process.

#### **R432-100-11. Patient Rights.**

(1) The facility shall inform ~~[and provide a written statement to the]~~each patient at the time of admission of patient rights and support the exercise of the patient's right to the following:

(a) to access all medical records, and to purchase at a cost not to exceed the community standard, photocopies of his record;

(b) to be fully informed of his medical health status in a language he can understand;

(c) to reasonable access to care;

(d) to refuse treatment;

(e) to formulate an advanced directive in accordance with the Personal Choice and Living Will Act, UCA 75-2-1102 ;

(f) to uniform, considerate and respectful care;

(g) to participate in decision making involved in managing his health care with his physician, or to have a designated representative involved;

(h) to express complaints regarding the care received and to have those complaints resolved when possible;

(i) to refuse to participate in experimental treatment or research; ~~and~~

(j) to be examined and treated in surroundings designed to give visual and auditory privacy; and ~~;~~

(k) to be free from mental and physical abuse, and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a licensed practitioner for a specified and limited period of time or when necessary to protect the patient from injury to himself or others.

(2) The hospital shall establish a policy and inform patients and legal representatives regarding the withholding of resuscitative services and the forgoing or withdrawing of life sustaining treatment and care at the end of life. This policy shall be consistent with state law.

#### **R432-100-12. Nursing Care Services.**

(1) There shall be an organized nursing department ~~;~~ that is integrated with other departments and services.

(a) The chief nursing officer of the nursing department shall be a registered nurse with demonstrated ability in nursing practice and administration.

(b) Nursing policies and procedures, nursing standards of patient care, and standards of nursing practice shall be approved by the chief nursing officer.

(c) A registered nurse shall be designated and authorized to act in the chief nursing officer's absence.

(d) Nursing tasks may be delegated pursuant to R156-31-603, Delegation of Nursing Tasks.

(2) Qualified registered nurses shall be on duty at all times to give patients nursing care that requires the judgment and special skills of a registered nurse.

~~—(a)~~ The nursing department shall develop and maintain a system for determining staffing requirements for nursing care on the basis of demonstrated patient need, intervention priority for care, patient load, and acuity levels.

~~[(b) The staffing patterns shall assure the presence of registered nurses on a 24-hour basis.]~~

(3) Nursing care shall be documented for each patient from admission through discharge.

(a) A registered nurse shall be responsible to document each patient's nursing care and coordinate the provision of interdisciplinary care.

(b) Nursing care documentation shall include the assessments of patient's needs, clinical diagnoses, intervention identified to meet the patient's needs, nursing care provided and the patients response,

the outcome of the care provided, and the ability of the patient, family, or designated caregiver in managing the continued care after discharge.

(c) Patients shall receive prior to discharge written instructions ~~[and referral]~~ for any follow-up care or treatment.

#### **R432-100-13. Critical Care Unit.**

(1) Hospitals that provide critical care units shall comply with the requirements of R432-100-13.

~~—~~ Medical direction for the unit(s) shall be according to the scope of services provided as delineated in hospital policy and approved by the ~~[governing]~~ board.

(2) Critical care unit nursing direction shall be ~~[vested in]~~ provided by a designated, qualified registered nurse manager who has relevant education, training and experience in critical care. The supervising nurse shall coordinate the care provided by all nursing service personnel in the critical care unit. The registered nurse manager shall have administrative responsibility for the critical care unit, assuring that a registered nurse who has advanced life support certification is on duty and in the unit at all times.

(3) Each critical care unit shall be designed and equipped to facilitate the safe and effective care of the patient population served. Equipment and supplies shall be available to the unit as determined by hospital policy in accordance with the needs of the patients.

(4) An emergency cart must be readily available to the unit and contain appropriate drugs and equipment according to hospital policy. The cart, or the cart locking mechanism, must be checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.

(5) The following support services shall be immediately available to the critical care unit on a 24-hour basis:

(a) ~~[Blood]~~ blood bank or supply;

(b) ~~[Clinical]~~ clinical laboratory; and

(c) ~~[Radiology]~~ radiology services.

(6) If the hospital provides dialysis services, the dialysis services shall comply with R432-650 End Stage Renal Disease Facility Rules, sections R432-650-8, Required Staffing; and R432-650-13, Water Quality.

#### **R432-100-14. Surgical Services.**

(1) Surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.

(a) ~~[Responsibility for the medical]~~ Administrative direction of surgical services shall be ~~[vested in]~~ provided by a person appointed and authorized by the administrator.

(b) Medical direction of surgical services shall be provided by a member of the medical staff.

~~[(b)]~~ ~~(c)~~ Qualified registered nurses shall supervise the provision of surgical nursing care.

~~[(c)]~~ ~~(d)~~ The operating room suites shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:

(i) ~~[Assuring]~~ assuring that the planned procedure is within the scope of privileges granted to the physician.

(ii) ~~[Maintaining]~~ maintaining the operating room register; and

(iii) ~~(Other)~~ other administrative functions, including serving on patient care committees.

~~(f)~~ (e) The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.

~~(f)~~ (f) Qualified surgical assistants shall be used as needed in operations in accordance with hospital by-laws.

~~(f)~~ (g) Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.

~~(g)~~ (h) Outpatient surgical patients shall not be routinely admitted to the hospital as inpatients. A systematic review process shall evaluate patients who require hospitalization after outpatient surgery.

(2) A safe operating room environment shall be established, controlled and consistently monitored.

(a) Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

(b) Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

(c) There shall be a scavenging system for evacuation of anesthetic waste gases.

(d) The following equipment shall be available to the operating suite:

(i) ~~(Call)~~ a call-in system;

(ii) ~~(Cardiac Monitor);~~ a cardiac monitor;

(iii) ~~(Ventilation)~~ a ventilation support system;

(iv) ~~(Defibrillator);~~ a defibrillator;

~~(Aspirator);~~ (v) an aspirator; and

~~(vi) Equipment for Cardiopulmonary Resuscitation;~~ (vi) equipment for cardiopulmonary resuscitation.

(3) The administration of anesthetics shall conform to the requirements of ~~(the)~~ Anesthesia ~~(Section)~~ Services, R432-100-15.

(4) Removal of surgical specimens shall ~~(be in conformance)~~ conform with the requirements of Laboratory and Pathology ~~(Section)~~ Services, R432-100-22.

#### **R432-100-15. ~~(Anesthesiology)~~ Anesthesia Services.**

(1) There shall be facilities and equipment for the administration of anesthesia commensurate with the clinical and surgical procedures planned for the institution. Anesthesia care shall be available on a 24-hour basis.

(a) ~~(Responsibility for the administrative)~~ Administrative direction of anesthesia services shall be ~~(vested in)~~ provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of anesthesia services shall be ~~(according to the scope of services)~~ provided ~~(as delineated in hospital policy and approved by the governing board)~~ by a member of the medical staff.

(c) Anesthesia care shall be provided by anesthesiologists, other qualified physicians, dentists, oral surgeons, or Certified Registered Nurse Anesthetists who are members of the medical staff within the scope of their practice and license.

(i) A qualified physician, dentist or oral surgeon shall have documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and shall be able to perform at least the following:

(A) procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, and other pain producing clinical procedures;

(B) life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(ii) The responsibilities and privileges of the person administering anesthesia shall be clearly defined by the medical staff.

(iii) Both the patient and the operating surgeon shall be informed prior to surgery of who will be administering anesthesia.

(iv) Medicaid certified hospitals shall comply with the requirements of 42 CFR 482.52(a), Subpart D, Anesthesia Services.

(2) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(3) The anesthetic equipment shall be inspected and tested by the person administering anesthesia before use in accordance with hospital policy.

~~(---)~~ (e)

#### **R432-100-16. Emergency Care Service.**

(1) Each hospital shall evaluate and classify itself to indicate its capability in providing emergency care.

(a) Level I offers comprehensive emergency care 24 hours a day in-house, with at least one physician experienced in emergency care on staff in the emergency care area. There shall be in-hospital support by members of the medical staff for at least medical, surgical, orthopedic, obstetric, pediatric, and anesthesia services. Specialty consultation shall be available within 30 minutes, or two-way voice communication is available for the initial consultation.

(b) Level II offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and with specialty consultation available within 30 minutes by members of the medical staff.

(c) Level III offers emergency care 24 hours a day, with at least one physician available to the emergency care area within approximately 30 minutes through a medical staff call roster. Specialty consultation shall be available by request of the attending medical staff member by transfer to a level I or level II hospital where care can be provided.

(d) Level IV offers emergency first aid treatment to patients, staff, and visitors; and to persons who may be unaware of, or unable to immediately reach services in other facilities.

(2) The emergency service shall be organized and staffed by qualified individuals based on the defined capability of the hospital.

(a) ~~(Responsibility for the administrative)~~ Administrative direction of ~~(the)~~ emergency services shall be provided by ~~(the hospital shall be vested in)~~ an individual appointed and authorized by the hospital administrator.

(b) ~~(Responsibility for medical)~~ Medical direction of emergency services shall be defined in writing and ~~(vested in)~~ provided by one or more members of the medical staff. The medical staff shall provide back-up and on-call coverage for

emergency services and as needed for emergency speciality services.

(c) The evaluation and treatment of a patient who presents himself or is brought to the emergency care area shall be the responsibility of a licensed practitioner.

(d) The priority by which persons seeking emergency care are seen by a physician may be determined by trained personnel using guidelines established by the emergency room director and approved by the medical staff.

(e) Rosters designating medical staff members on duty or on call for primary coverage and speciality consultation shall be posted in the emergency care area.

(f) A designated registered nurse who is qualified by relevant training, experience, and current competence in emergency care shall supervise the care provided by all nursing service personnel in the department.

(i) The number of nursing service personnel shall be sufficient for the types and volume of patients served.

(ii) Level I and II emergency departments shall have at least one registered nurse with Advanced Cardiac Life Support certification, and sufficient number of other nursing staff assigned and on duty within the emergency care area.

(iii) The emergency nurse supervisor shall participate in internal committee activities concerned with the emergency service.

(g) The emergency service shall be integrated with other departments in the hospital.

(i) Clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids shall be available. A supply of blood shall be available at all times.

(ii) Diagnostic radiology services shall be available at all times.

(h) The duties and responsibilities of all personnel, including physicians and nurses, providing care within the emergency service area shall be defined in writing.

(3) ~~The~~ Each hospital shall define its scope of emergency services in writing and implement a plan for emergency care, based on community need and on the capability of the hospital.

(a) Each hospital shall comply with federal anti-dumping regulations as defined in CFR 489.20 and 489.24.

(b) The role of the emergency service in the hospital's disaster plans shall be defined.

(c) ~~There shall be~~ Each hospital must have a communication system that permits instant contact with law enforcement agencies, rescue squads, ambulance services, and other emergency services within the community.

(d) Emergency department policies and protocols shall address the care, security, and control of prisoners or people to be detained for police or protective custody.

(e) Emergency department policies and protocols shall address the provision of care to an unemancipated minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient.

(f) Emergency department policies and procedures shall address the evaluation and handling of alleged or suspected child or adult abuse cases. Criteria shall be developed to alert emergency department and service personnel to possible child or adult abuse. The criteria shall address:

- (i) suspected physical assault;
- (ii) suspected rape or sexual molestation;

(iii) suspected domestic abuse of elders, spouses, partners and children;

(iv) the collection, retention, and safeguarding of specimens, photographs, and other evidentiary materials; and

(v) visual and auditory privacy during examination and consultation of patients.

(g) A list shall be available in the emergency department of private and public community agencies and resources that provide, arrange, evaluate and care for the victims of abuse.

(h) Emergency department policies and procedures shall address the handling of hazardous materials and contaminated patients.

(i) Emergency department policies and procedures shall address the reporting of persons dead-on-arrival to the proper authorities including the legal requirements for the collection and preservation of evidence.

(4) The hospital shall in a timely manner make reasonable effort to contact the guardian, parents, or next of kin of any unaccompanied minor, or any unaccompanied unconscious patient admitted to the emergency department.

#### **R432-100-17. Perinatal Services.**

(1) Each hospital shall comply with the requirements of this section.

(a) ~~Responsibility for the administrative~~ Administrative direction of perinatal services shall be provided by ~~the hospital shall be vested in~~ a person appointed and authorized by the hospital administrator.

(b) Medical direction for perinatal services shall be provided by a qualified member of the medical staff.

(c) ~~The~~ Each hospital shall establish and implement security protocols for perinatal patients.

(d) A qualified registered nurse shall be immediately available.

(2) The perinatal department shall include facilities and equipment for labor and delivery, nursery, postpartum, and optional birthing rooms.

(a) Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions. The use of maternity rooms for patients other than maternity patients shall be restricted according to hospital policy.

(3) Each hospital shall have access to at least one surgical suite for operative delivery.

(a) Equipment and supplies shall be maintained for the mother and newborn, including:

(i) ~~Furnishings~~ furnishings suitable for labor, birth, and recovery;

(ii) ~~Oxygen~~ oxygen with flow meters and masks or equivalent;

(iii) ~~Mechanical~~ mechanical suction and bulb suction immediately available;

(iv) ~~Resuscitation~~ resuscitation equipment;

(v) ~~Emergency~~ emergency medications, intravenous fluids, and related supplies and equipment;

(vi) ~~A~~ a device to assess fetal heart rate;

(vii) ~~Equipment~~ equipment to monitor and maintain the optimum body temperature of the newborn;



(viii) ~~[A]~~a clock capable of showing seconds;  
 (ix) ~~[Adjustable]~~an adjustable examination light; and  
 (x) ~~[A]~~a warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit ~~[shall]~~must be capable of administering oxygen and suctioning[?].

(b) The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.

(4) If birthing rooms are provided, they shall be equipped in accordance with 100-17(3)(a).

(5) ~~[The]~~Each hospital shall comply with the following provisions:

(a) No attempt shall be made to delay the imminent, normal birth of a child[?].

(b) A prophylactic solution approved by the Department of Health shall be instilled in the eyes of the infant within three hours of birth in accordance with R386-702-9[?].

(c) Metabolic screening shall be performed in accordance with State Health Laboratory rules developed pursuant to Section 26-10-6.

(6) ~~[The]~~Each hospital shall designate its capability to provide nursery care in accordance with the following levels of nursery care as described in the Guidelines for Perinatal Care, Fourth Edition and The Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992 - 1993 Edition.

(a) Level I Basic: Full Term or Well Baby Nursery;

(b) Level II Specialty: Continuous Care Nursery;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery.

(7) The nursery area shall provide each infant with separate equipment and supplies for bathing, dressing, and handling.

(a) There shall be equipment and supplies in or near the nursery that include:

(i) ~~[An]~~an individual bassinet for each infant;

(ii) ~~[Accurate]~~accurate scales; and

(iii) ~~[A]~~a reliable wall thermometer.

(b) Temperatures between 70-80 degrees F. shall be maintained in the nursery.

(c) There shall be an individual thermometer, or one with disposable tips[?], for each infant.

(d) A supply of medication shall be immediately available for emergencies[?].

(e) The following equipment and supplies shall be available:

(i) ~~[A]~~a covered soiled-diaper container with removable lining;

(ii) ~~[A]~~a linen hamper with removable bag for soiled linen other than diapers;

(iii) ~~[A]~~a warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

(iv) ~~[Oxygen]~~oxygen, oxygen equipment, and suction equipment; and

(v) ~~[An]~~an oxygen concentration monitoring device.

(f) Infant formula storage space shall be available that conforms to the manufacturer's recommendations.

(g) Only single-use bottles shall be used for newborn feeding.

(8) A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

(a) Isolation facilities shall be used for any infant who:

(i) ~~[Has]~~has a communicable disease;

(ii) ~~[Is]~~is delivered of an ill mother infected with a communicable disease;

(iii) ~~[Is]~~is readmitted after discharge from a hospital; or

(iv) ~~[Is]~~is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

#### **R432-100-18. Pediatric Services.**

(1) If the hospital provides pediatric services, those services shall be under the direction of a member of the medical staff who is experienced in pediatrics and whose functions and scope of responsibility are defined by the medical staff.

(a) A pediatrics qualified registered nurse must supervise nursing care and must supervise the documentation of the implementation of pediatric patient care on an interdisciplinary plan of care.

(b) If the hospital provides a pediatric unit, it shall have an interdisciplinary committee responsible for policy development and review of practice within the unit. This committee must include representatives from administration, the medical and nursing staff, and rehabilitative support staff.

(c) Hospitals admitting pediatric patients shall have written policies and procedures specifying the criteria for admission to the hospital and conditions requiring transfer when indicated. These policies and procedures shall be based upon the resources available at the hospital, specifically, in terms of personnel, space, equipment, and supplies.

~~(d)~~(d) The hospital shall assess all pediatric patients for maturity and development. Information obtained from the maturity and development assessment must be incorporated into the plan of care.

~~(e)~~(e) The hospital shall establish and implement security protocols for pediatric patients.

~~(f)~~(f) The hospital shall provide a safe area for diversional play activities.

~~(g)~~(g) Hospitals admitting pediatric patients shall have equipment and supplies in accordance with the hospital's scope of pediatric services.

(3) The hospital shall have written guidelines for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital. The guidelines shall address the use of cribs, bassinets, or beds; including the proper use of restraints, bed rails, and other safety devices.

(a) The hospital shall place infant patients in beds where frequent observation is possible.

(b) Pediatric patients other than infants shall be placed in beds to allow frequent observation according to each patient's assessed care needs.

(4) Personnel working with pediatric patients shall have specific training and experience relating to the care of pediatric patients.

(5) Orientation and inservice training for pediatric care staff shall include pediatric specific training on drugs and toxicology, intravenous therapy, pediatric emergency procedures, infant and child nutrition, the emotional needs and behavioral management of hospitalized children, child abuse and neglect, and other topics according to the needs of the pediatric patients.

**R432-100-19. Respiratory Care Services.**

(1) ~~[Responsibility for the administrative]~~Administrative direction of ~~[the]~~respiratory care services shall be provided by ~~[the hospital shall be vested in]~~a person authorized by the hospital administrator.

~~[(a)]~~(2) The respiratory care service shall be under the medical direction of a member of the medical staff~~;~~ who has the responsibility and authority for the overall direction of respiratory care services.

~~[(b)]~~(a) When the scope of services warrants, respiratory care services shall be supervised by a technical director who is registered or certified by the National Board For Respiratory Therapy, Inc., or has the equivalent education, training, and experience.

~~[(c)]~~(b) The technical ~~[directors]~~director shall inform physicians about the use and potential hazards in the use of any respiratory care equipment.

~~[(d)]~~(3) Respiratory care services shall be provided to patients in accordance with a written prescription of the responsible licensed practitioner which specifies the type, frequency, and duration of the treatment; and when appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration.

~~[(e)]~~(a) The hospital must have equipment to perform any pulmonary function study or blood-gas analysis provided by the hospital.

~~[(f)]~~(b) Resuscitation, ventilatory, and oxygenation support equipment shall be available in accordance with the needs of the patient population served.

**R432-100-20. Rehabilitation Therapy Services.**

(1) If rehabilitation therapy services are provided by the hospital, the services may include physical therapy, speech therapy, and occupational therapy.

(a) Rehabilitation therapy services shall be directed by a qualified, licensed provider who shall have clinical ~~[responsibilities]~~responsibility for the specific therapy service.

(b) ~~All rehabilitation therapy staff shall be licensed, registered, or certified as required by the Utah Department of Commerce.~~

~~[(c)]~~ Patient services performed by support personnel, shall be commensurate with each person's documented training and experience.

~~[(d)]~~(c) Rehabilitation therapy services may be initiated by a member of the medical staff or by a licensed rehabilitation therapist.

(i) A physician's written request for services ~~[shall]~~must include reference to the diagnosis or problems for which treatment is planned, and any contraindications.

(ii) The patient's physician shall retain responsibility for the specific medical problem or condition for which the referral was made.

~~[(e)]~~(2) Rehabilitation therapy services provided to the patient shall include evaluation of the patient, establishment of goals, development of a plan of treatment, regular and frequent assessment, maintenance of treatment and progress records, and periodic assessment of the quality and appropriateness of the care provided.

**R432-100-21. Radiology Services.**

(1) Each hospital shall provide an organized radiology department offering services that are in accordance with the needs and size of the institution.

(a) ~~[Responsibility for the administrative]~~Administrative direction of ~~[the]~~radiology services shall be provided by ~~[the hospital shall be vested in]~~a person appointed and authorized by the hospital administrator.

(b) Medical direction of the department shall be provided by a member of the medical staff.

(i) If a radiologist is not the medical director of the radiology services, the services of a radiologist shall be retained on a part-time basis.

(ii) If a radiologist provides services on less than a full-time basis, the time commitment shall allow ~~[him]~~the radiologist to complete the necessary functions to meet the radiological needs of the patients and the medical staff.

(c) The radiologist is responsible to:

(i) maintain a quality control program that minimizes unnecessary duplication of radiographic studies and maximizes the quality of diagnostic information available;

(ii) develop technique charts that include part, thickness, exposure factors, focal film distances and whether a grid or screen technique; and

(iii) assure the availability of information regarding the purpose and yield of radiological procedures and the risks of radiation.

(d) At least one ~~[qualified]~~licensed radiologic technologist shall be on duty or available when needed. ~~[Each radiological technologist shall be licensed pursuant to Title 58, Chapter 54.]~~

(e) Diagnostic radiology services shall be performed only at the request of a member of the medical staff or other persons authorized by the hospital.

(f) If radiation oncology services are provided, the following applies:

(i) ~~[physicians]~~Physicians and staff who provide radiation oncology services have delineated privileges;

(ii) ~~[the]~~The medical director of the radiation oncology services is a physician member of the medical staff who is qualified by education and experience in radiation oncology.

(2) Radiologic patient records shall be integrated with the hospital patient record.

(a) All requests for radiologic services shall contain the reasons for the examinations.

(b) Authenticated reports of these examinations shall be filed in the patient's medical record as soon as possible. Radiological film shall be retained in accordance with hospital policy.

(c) If requested by the attending physician and if the quality of the radiograph permits, the radiology department may officially enter the interpretations of the radiologic examinations performed outside of the hospital in the patient's medical record.

(d) Radiotherapy summaries shall be filed in the patient's medical record~~[-a]~~. A copy may be filed in the radiotherapy department. The radiotherapy summary shall be forwarded to the referring physician. Unless otherwise justified, the medical record of the patient receiving radiotherapy for treatment or palliation of a malignancy shall reflect the histologically substantiated diagnosis.

**R432-100-22. Laboratory and Pathology Services.**

(1) Each hospital shall provide laboratory and pathology services that are in accordance with the needs and size of the institution.

(a) ~~[Responsibility for the administrative]~~ Administrative direction of ~~[the]~~ laboratory and pathology services shall be provided by ~~[the hospital shall be vested in]~~ a person appointed and authorized by the hospital administrator.

(b) ~~[Responsibility for the medical]~~ Medical direction of ~~[the]~~ laboratory and pathology services shall be ~~[vested in]~~ provided by a member of the medical staff ~~[who shall be appointed or elected by the medical staff.].~~

~~(c)~~ (2) Laboratory and pathology services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

~~(d)~~ (3) Laboratories certified by a Health Care Financing Administration (HCFA) approved accrediting agency are determined to be in compliance with this section. Accrediting agency inspection reports shall be available for Department review.

**R432-100-23. Blood Services.**

(1) Hospital blood services are defined as follows:

(a) A "donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(b) A "transfusion service" means a facility that stores, determines compatibility, transfuses blood and blood components, and monitors transfused patients for any ill effect.

(c) A "blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(2) The hospital blood service shall establish and maintain an appropriate blood inventory in the hospital at all times, have immediate access to community blood services or other institutions, or have an up-to-date list of donors, equipment and trained personnel to draw and process blood.

(a) Blood or blood components must be collected, stored, and handled in such manner that they retain potency and safety.

(b) Blood or blood components must be properly processed, tested, and labeled.

(3) If the hospital operates a donor center, transfusion service or a blood bank the donor center, transfusion service, or blood bank must be accredited.

(a) Hospital blood banks and donor centers must be accredited by the Food and Drug Administration (FDA).

(b) Hospital transfusion centers must be accredited by either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or the American Association of Blood Banks (AABB).

(4) Results of the accrediting organization survey must be available for Department review.

**R432-100-24. Pharmacy Services.**

(1) The pharmacy of a hospital currently accredited and conforming to the standards of ~~[The Joint Commission on Accreditation of Health Care Organizations (JCAHO)]~~ JCAHO shall be determined to be in compliance with these rules.

(a) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.

(b) The pharmacy department and service shall be directed by a licensed pharmacist ~~[licensed by the Utah Department of Commerce].~~

(i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed.

(ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.

(iii) Provision shall be made for access to emergency pharmaceutical services.

(iv) The pharmacist shall be trained in the specific functions and scope of the hospital pharmacy.

(2) Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.

(a) All floor-stocks shall be kept in secure areas in the patient care units.

(b) Double-locked storage shall be provided for controlled substances. Electronically controlled storage of narcotics may be permitted if automated dispensing technology is utilized by the hospital.

(c) Medications stored at room temperatures shall be maintained within 59 and 80 degrees F.

(d) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(e) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.

(3) Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with other hospital records.

(a) There shall be a recorded and signed floor-stock controlled substance count once per shift.

(b) ~~[H]~~ Hospitals that utilize automated dispensing technology ~~[is utilized by the hospital.]~~ must implement a system for accounting of controlled substances dispensed by the automated dispensing system ~~[shall be implemented].~~

(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.

(4) Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff.

(a) Drugs that are provided to floor units shall be administered in accordance with hospital policies and procedures.

(b) The medical staff in conjunction with the pharmacist shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.

(c) The pharmacist shall have full responsibility for dispensing of all drugs.

(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.

(e) There shall be a documentation system for the accounting and replacement of drugs, including narcotics, to the emergency department.

(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures including notification of the practitioner who ordered the drug.

**R432-100-25. Social Services.**

(1) In a hospital with an organized social services department, a qualified social worker shall direct the provision of social work services. If a hospital does not have a full or part-time qualified social worker, the administrator shall designate an employee to coordinate and assure the provision of social work services. The social worker, or designee shall be knowledgeable about community agencies, institutions, and other resources.

(2) In a hospital without an organized social services department, the hospital shall obtain consultation from a qualified social worker to provide social work services.

(3) The staff shall be oriented to help the patient make the best use of available inpatient, outpatient, extended care, home health, and hospice services.

(4) Social Services shall be integrated with ~~services of~~ other departments and services of the hospital.

~~any~~

**R432-100-26. Psychiatric Services.**

(1) If provided by the hospital, psychiatric services shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.

(a) If the hospital does not provide psychiatric services, ~~there shall be a procedure~~ the hospital must have procedures to transfer patients to a facility that can provide the necessary psychiatric services.

(b) ~~Responsibility for the administrative~~ Administrative direction of psychiatric services shall be provided by ~~the hospital shall be vested in~~ a person appointed and authorized by the hospital administrator.

(c) ~~Responsibility for the medical~~ Medical direction of psychiatric services ~~provided by the hospital~~ shall be defined in writing and ~~vested in~~ provided by a qualified physician who is a member of the medical staff.

(d) Psychiatric services shall comply with the following sections of R432-101, Specialty Hospitals, Psychiatric:

- (i) R432-101-13 Patient Security;
- (ii) R432-101-14 Special Treatment Procedures;
- (iii) R432-101-17 Admission and Discharge;
- (iv) R432-101-20 Inpatient Services;
- (v) R432-101-21 Adolescent or Child Treatment Programs;
- (vi) R432-101-22 Residential Treatment Services;
- (vii) R432-101-23 Physical Restraints, Seclusion, and Behavior Management;

(viii) R432-101-24 Involuntary Medication Administration; and

- (ix) R432-101-34 Partial Hospitalization Services.

~~(e)~~ (2) If outreach services are ordered by a physician as part of the plan of care or hospital discharge plan, the outreach services may be provided in a clinic, physician's office, or the patient's home.

**R432-100-27. Substance Abuse Rehabilitation Services.**

(1) A hospital may provide inpatient or outpatient substance abuse rehabilitation services. A hospital that provides substance abuse rehabilitation services shall be staffed to meet the needs of the patients or clients ~~and coordinated with other hospital services.~~

~~(a) Responsibility for administrative~~ (a) Administrative direction shall be ~~vested in~~ provided by an individual appointed and authorized by the hospital administrator ~~of the hospital.~~

~~(b) Responsibility for medical~~ (b) Medical direction shall be defined in writing and ~~vested in~~ provided by a qualified physician who is a member of the medical staff.

(c) ~~Responsibility for nursing~~ Nursing services shall be under the direction of a full-time registered nurse.

(d) ~~Responsibility for substance~~ Substance abuse counseling shall be under the direction of a licensed mental health therapist.

(e) A licensed substance abuse counselor may serve as the primary therapist under the direction of an individual licensed under the Mental Health Practice Act.

(f) An interdisciplinary team including the physician, registered nurse, licensed mental health therapist, and substance abuse counselor shall be responsible for program and treatment services. The patient or client may be included as a member of the interdisciplinary team.

(2) Substance abuse rehabilitation services shall include at least the following:

(a) Detoxification care shall be available for the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling, or nursing care.

(b) Counseling shall be available in at least one of the following areas: individual, group, or family counseling. In addition, there shall be provisions for educational, employment, or other counseling as needed.

(c) Treatment services shall be coordinated with other hospital and community services to assure continuity of care through discharge planning and aftercare referrals. Counselors may refer patients or clients to public or private agencies for substance abuse rehabilitation, and employment and educational counseling.

(d) A comprehensive assessment shall be documented that includes at least a physical examination, a psychiatric and psychosocial assessment, and a social assessment.

(3) The confidentiality of medical records of substance abuse patients and clients shall be maintained according to the federal guidelines in 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(4) Residential treatment services may be provided under the direction of the medical director or his designee. Residential treatment services shall comply with R432-101-22.

**R432-100-28. Outpatient Services.**

(1) Outpatient care ~~service~~ services provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of services provided.

~~(a)~~ (2) Outpatient care shall meet the same standards of care that apply to inpatient care.

~~(b)~~ (3) Outpatient care includes hospital owned outpatient services, and hospital satellite services.

**R432-100-29. Respite Services.**

(1) A remote-rural general acute hospital with a federal swing bed designation may provide respite services to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for an individual.

(a) The hospital may provide respite care services and need comply only with the requirements of this section.

(b) If, however, the hospital provides respite care to an individual for longer than 14 consecutive days, the hospital must admit the individual as an inpatient subject to the requirements of this rule applicable to non-respite inpatient admissions.

(2) Respite services may be provided at an hourly rate or daily rate.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the individual's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) ~~[A]~~a Level 1 Pre-admission Screening upon the person's admission for respite services; ~~and~~[-]

(b) ~~[A]~~a service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

(a) ~~Medication~~medication administration;

(b) ~~Notification~~notification of a responsible party in the case of an emergency;

(c) ~~Service~~service agreement and admission criteria;

(d) ~~Behavior~~behavior management interventions;

(e) ~~Philosophy~~philosophy of respite services;

(f) ~~Post~~post-service summary;

(g) ~~Training~~training and in-service requirement for employees; and

(h) ~~Handling~~handling patient funds.

(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

(8) The facility shall maintain a record for each patient who receives respite services which includes:

(a) ~~Service~~a service agreement;

(b) ~~Demographic~~demographic information and patient identification data;

(c) ~~Nursing~~nursing notes;

(d) ~~Physician~~physician treatment orders;

(e) ~~Records~~records made by staff regarding daily care of the patient in service;

(f) ~~Accident~~accident and injury reports; ~~and~~

(g) ~~Post~~a post-service summary.

(9) If a patient has an advanced directive, the facility shall file a copy of the directive in the record and inform staff.

(10) Retention and storage of records shall comply with R432-100-33.

(11) The hospital shall provide for confidentiality and release of information in accordance with R432-100-33.

#### **R432-100-30. Pet Therapy.**

(1) ~~[Household pets];~~If a hospital utilizes pet therapy, household pets such as dogs, cats, birds, fish, and hamsters may be permitted~~[ according to hospital policy].~~

(a) Pets must be clean and disease free.

(b) The immediate environment of the pets must be clean.

(c) Small pets shall be kept in appropriate enclosures.

(d) Pets that are not confined shall be kept under leash control~~[-]~~ or voice control.

(e) Pets that are kept at the hospital, or are frequent visitors shall have current vaccinations, including rabies, as recommended by a licensed veterinarian.

(f) Hospitals with birds shall have procedures in place which protect patients, staff, and visitors from psittacosis.

(2) Hospitals that permit pets to remain overnight shall have policies and procedures for the care, housing and feeding of such pets; and for the proper storage of pet food and supplies.

(3) Pets shall not be permitted in any area where their presence would create a significant health or safety hazard or nuisance to others.

(4) Pets shall not be permitted in food preparation and storage areas.

(5) Persons caring for pets shall not have patient care or food handling responsibilities.

#### **R432-100-31. Dietary Service.**

(1) There shall be an organized dietary department under the supervision of a certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.

(a) ~~Responsibility for the direction~~Direction of the dietary service shall be ~~vested in~~provided by a person whose qualifications, authority, responsibilities and duties are ~~defined or~~ approved by the administrator. The director shall have the administrative responsibility for the dietary service.

(b) If the services of a certified dietitian are used on less than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

(c) There shall be food service personnel to perform all necessary functions.

(2) If dietetic services are provided by an outside provider, the outside provider shall comply with the standards of this section.

(3) A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

(a) The food and nutritional needs of patients shall be met in accordance with the physician's orders.

(b) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(c) The menus shall provide for a variety of foods served in adequate amounts at each meal.

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast. If a substantial evening snack is offered, a 16-hour time span is permitted.

(e) A source of non-neutral exchanged water shall be provided for use in preparation of no sodium meals, snacks, and beverages.

(4) The dietary department shall comply with the Utah Department of Health Food Service Sanitation Rule R392-~~100~~[~~†~~].

(a) The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

(b) Traffic of unauthorized individuals through food preparation areas shall be controlled.

(5) Written reports of inspections by state or local health departments shall be on file at the ~~[facility]~~hospital and available for Department review.

(6) The dietitian or authorized designee is responsible for documenting nutritional information in the patient's medical record.

(7) Diets shall be ordered by a member of the medical staff and transmitted in writing to the dietary department.

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**R432-100-33. Medical Records.**

(1) The hospital shall establish a medical records department or service that is responsible for the administration, custody and maintenance of medical records.

(a) The administrative direction of the department shall be established by the hospital administrator and correspond to the organizational structure and policies of the hospital.

(b) The medical records department shall retain the technical services of either a Registered Records Administrator (RRA) or an Accredited Records Technician (ART) through employment or consultation. If retained by consultation, visits shall be at least quarterly and documented through written reports to the hospital administrator.

(2) The medical records department shall provide secure storage, controlled access, prompt retrieval, and equipment and facilities to review medical records.

(a) Medical records shall be available for use or review by members of the medical and professional staff; authorized hospital personnel and agents; persons authorized by the patient through a consent form; and Department representatives to determine compliance with licensing rules.

(b) Medical records may be stored in multiple locations providing the record is able to be retrieved or accessed in a reasonable time period.

(c) If computer terminals are utilized for patient charting, the hospital shall have policies governing access and identification codes, security, and information retention.

(d) The hospital medical record shall be indexed according to diagnosis, procedure, demographic information and physician or licensed health practitioner. The indexes shall be current within six months following discharge of the patient.

(e) Original medical records are the property of the hospital and shall not be removed from the control of the hospital or the hospital's agent as defined by policy except by court order or subpoena.

(f) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(3) All medical record entries shall be legible, complete, authenticated, and dated by the person responsible for ordering the service, providing or evaluating the service, or making the entry. Prepared transcriptions of dictated reports, evaluations and consultations must be reviewed by the author before authentication.

(a) The authentication may include written signatures, computer key, or other methods approved by the governing body

and medical staff to identify the name and discipline of the person making the entry.

(b) Use of computer key or other methods to identify the author of a medical record entry is not assignable or to be delegated to another person.

(c) There shall be a current list of persons approved to use these methods of authentication. Hospital policies shall include appropriate sanctions for the unauthorized or improper use of computer codes.

(d) Verbal orders for the care and treatment of the patient shall be accepted and transcribed by qualified personnel and authenticated as stated in hospital policy.

(4) ~~[Medical record services shall be available for all persons admitted to, or provided services by the hospital:~~

~~—(a)—~~ Patient records shall be organized ~~[as directed by]~~ according to hospital policy.

~~(b)~~(a) Medical records shall be reviewed at least quarterly for completeness, accuracy, and adherence to hospital policy.

~~(c)~~(b) Records of discharged patients shall be collected, assembled, reviewed for completeness, and authenticated within 30 days of the patient's discharge.

~~(d)~~(c) Medical records shall be retained for at least seven years. Medical records of minors shall be kept until the age of eighteen plus four years, but in no case less than seven years.

~~(e)~~(d) Medical records may be destroyed after being retained the minimum length of time, according to hospital policy. Prior to destruction of the record, the following information shall be extracted and retained:

(i) ~~[Patient]~~patient name, medical record number, next of kin, date of birth, admission and discharge date(s); and,

(ii) ~~[The]~~the name of attending physician(s), admitting and discharge diagnoses, surgical procedures(s) and pathological and diagnostic findings.

~~(f)~~(e) If a hospital ceases operation, the hospital shall make provision for secure, safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-2-14. The hospital may arrange for storage of medical records with another hospital, or an approved medical record storage facility, or may return patient medical records to the attending physician if the physician is still in the community.

(5) A complete medical record shall be established and maintained for each patient admitted to, or who receives hospital services. Emergency and outpatient records shall document the service rendered, and shall contain other pertinent information in accordance with hospital policy.

(a) Each medical record shall contain patient identification and demographic information to include at least the patient's name, address, date of birth, sex, and next of kin.

(b) Each medical record shall contain initial or admitting medical history, physical and other examinations or evaluations. Recent histories and examinations may be substituted if updated to include changes that reflect the patient's current status.

(c) Each medical record shall contain admitting, secondary and principal diagnoses.

(d) Each medical record shall contain results of consultive evaluations and findings by persons involved in the care of the patient.

(e) Each medical record shall contain documentation of complications, hospital acquired infections, and unfavorable reactions to medications, treatments, and anesthesia.

(f) Each medical record shall contain properly executed informed consent documents for all procedures and treatments ordered for, and received by, the patient.

(g) Each medical record shall document that the facility requested of each admitted person whether the person ~~had~~ has initiated an advanced directive as defined in the Personal Choice and Living Will Act, UCA 75-2-1102.

(h) Each medical record shall contain all practitioner orders, nursing notes, reports of treatment, medication records, laboratory and radiological reports, vital signs and other information that documents the patient condition and status.

(i) Each medical record shall contain a discharge summary including outcome of hospitalization, disposition of case with an autopsy report when indicated, or provisions for follow-up.

(j) ~~Each medical record~~ Medical records of deceased patients shall contain a completed Inquiry of Anatomical Gift form or a modified hospital death form which has been approved by the Utah Department of Health as required by Section 26-28-6, UCA.

(k) Medical records of surgical patients shall contain a pre-operative history and physical examination; surgeon's diagnosis; an operative report describing a description of findings; an anesthesia report including dosage and duration of all anesthetic agents and all pertinent events during the induction, maintenance, and emergence from anesthesia; the technical procedures used; the specimen removed; the post-operative diagnosis; and the name of the primary surgeon and any assistants written or dictated by the surgeon within 24 hours after the operation.

(l) Medical records of obstetrical patients shall contain a relevant family history, a pre-natal examination, the length of labor and type of delivery with related notes, the anesthesia or analgesia record, the Rh status and immune globulin administration when indicated, a serological test for syphilis, and a discharge summary for complicated deliveries or final progress note for uncomplicated deliveries.

(m) Medical records of newborn infants shall contain the following documentation in addition to the requirements for obstetrical medical records:

(i) ~~Documentation must include a copy of the mother's~~ mother's delivery room record; In adoption cases where the identity of the mother is confidential, inclusion and access to the mother's delivery room record shall be according to hospital policy.

(ii) Documentation must include the date and hour of birth, period of gestation, sex, reactions after birth, delivery room care, temperature, weight, time of first urination, and number, character, and consistency of stools

~~(iii)~~ (iii) Documentation must include a record of the physical examination completed at birth and discharge, record of ophthalmic prophylaxis, and the identification number of the newborn screening kit, referred to in R398-1

~~(iv)~~ (iv) If the infant is discharged to any person other than the infant's parents, the hospital shall record the authorization by the parents, state agency, or court authority ~~and record the name and address of such person, including where the infant was taken~~.

(n) Emergency department patient medical records shall be integrated into the hospital medical record and include time and

means of arrival, emergency care given to the patient prior to arrival, history and physical findings, lab and x-ray reports, diagnosis, record of treatment, and disposition and discharge instructions.

(o) Patient medical social services records shall include a medical-social or psycho-social study of referred inpatients and outpatients; the financial status of the patient, social therapy and rehabilitation of patients, environmental investigations for attending physicians, and cooperative activities with community agencies.

(p) Medical records of patients receiving rehabilitation therapy shall include a written plan of care appropriate to the diagnosis and condition, a problem list, and short and long term goals.

(6) The medical records department shall maintain records, reports and documentation of admissions, discharges, and the number of autopsies performed.

(7) The medical records department shall maintain vital statistic registries for births, deaths, and the number of operations performed. The medical records department shall report vital statistics data in accordance with the Vital Statistics Act, Utah Health Code, (26-2, UCA).

#### **R432-100-34. Central Supply Services.**

(1) The central supply service supervisor shall be qualified for the position by education, training, and experience.

(2) The hospital shall provide space and equipment for the cleaning, disinfecting, packaging, sterilizing, storing, and distributing of medical and surgical patient care supplies.

(a) A hospital central service area shall provide for the following:

(i) A decontamination area which shall be separated by a barrier or divider to allow the receiving, cleaning, and disinfection functions to be performed separately from all other central service functions;

(ii) A linen assembly or pack-making area which shall have ventilation to control lint.

~~—~~ The linen assembly or pack-making area shall be separated from the general sterilization and processing area.

(iii) The sterilization area shall contain hospital sterilizers with approved controls and safety features.

(b) The accuracy of the sterilizers' performance shall be checked by a method that includes a permanent record of each run.

(c) Sterilizers shall be tested by biological monitors at least weekly.

(d) If gas sterilizers are used, they shall be inspected, maintained, and operated in accordance with the manufacturer's recommendations.

(3) The storage area shall be separated into sterile and non-sterile areas. The storage area shall have temperature and humidity controls, and shall be free of excessive moisture and dust. Outside shipping cartons shall not be stored in this area.

(4) During each shift that the central service area is staffed, counter tops and tables shall be wiped with a broad spectrum disinfectant.

(5) All apparel worn in central supply shall be issued and laundered according to hospital policy.

#### **R432-100-35. Laundry Service.**

(1) ~~Responsibility for the direction~~ Direction of the laundry service shall be ~~vested in~~ provided by a person whose

qualifications, authority, responsibilities and duties are ~~[defined or]~~ approved by the administrator.

~~[(a)](2)~~ Hospitals using commercial linen services shall require written assurance from the commercial service that standards in this subsection ~~[shall be]~~are maintained.

~~[(i)](a)~~ Clean linen shall be completely packaged and protected from contamination until received by the hospital~~[-]~~.

~~[(ii)](b)~~ The use of a commercial linen service does not relieve the hospital from its quality improvement responsibilities.

~~[(b)](3)~~ ~~Hospitals that maintain an in-house laundry [area shall be planned, equipped, and ventilated to prevent the dissemination of contaminants. The ventilation system shall include adequate intake, filtration, exchange rate, and exhaust.]~~service must have equipment, supplies and staff available to meet the needs of the patients.

~~[(c)]~~ A soiled linen processing area, when located in the hospital, shall be separated from the clean linen processing area, from patient rooms, from areas of food preparation and storage, and from areas in which clean material and equipment are stored.

~~[(2)](a)~~ Soiled linen shall be collected in a manner to minimize cross-contamination. [

~~(a) When soiled linen is collected from patient areas, it shall be placed in a bag or container.]~~ Containers shall be properly closed as filled and before further transport.

(i) Soiled linen shall be sorted only in a sorting area.

(ii) Handwashing is required after handling soiled linen and prior to handling clean items.

(iii) Employees handling soiled linen shall wear protective clothing which must be removed before leaving the soiled work area.

~~[(b)](iv)~~ Soiled linen shall be transported separately from clean linen.

~~[(c)]~~ Soiled linen from isolation areas and septic surgical cases shall be identified and suitable precautions shall be taken in its subsequent processing.

~~[(3)](b)~~ The hospital shall maintain a supply of clean linen.

~~[(a)](i)~~ Clean linen shall be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

~~[(b)](ii)~~ Clean linen shall be stored in enclosed closet areas or carts.

~~[(c)](iii)~~ Clean linen shall be covered during transport.

(4) The hospital is responsible to launder employee scrubs that are worn in the following areas:

(a) surgical areas;

(b) ~~labor and delivery areas;~~

~~(c) nursery areas;~~

~~(d)~~ other areas as required by the Occupational Health and Safety Act.

(5) If hospital employee scrubs are designated as uniforms that may be worn to and from work, policies and procedures shall be developed and implemented defining the scope and usage of scrubs as uniforms including hospital storage of employee scrubs, and provisions for hospital-provided scrubs in case of contamination.

#### **R432-100-36. Housekeeping Services.**

(1) There shall be housekeeping services to maintain a clean, safe, sanitary, and healthful environment in the [facility]hospital.

(2) If the [facility]hospital contracts for housekeeping services with an outside service, there shall be a signed and dated agreement that details the services provided.

(3) The hospital shall provide safe, secure storage of cleaners and chemicals. Cleaners and chemicals stored in areas that may be accessible to patients shall be kept secure in accordance with hospital policy.

(4) Storage and supplies in all areas of the hospital shall be stored at least four inches off the floor, and at least 18 inches below the lowest portion of the sprinkler system.

(5) Personnel engaged in housekeeping or laundry services may not be engaged simultaneously in food service or patient care.

(6) If personnel work in food or direct patient care services, [facility]hospital policy shall be established and followed to govern the transition from housekeeping services to patient care.

#### **R432-100-37. Maintenance Services.**

(1) There shall be maintenance services to ensure that [facility]hospital equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of [facility]hospital maintenance.

(b) If the [facility]hospital contracts for maintenance services, there shall be a signed and dated agreement that details the services provided.

(c) A pest-control program shall be conducted to ensure the [facility]hospital is free from vermin and rodents.

(d) Entrances, exits, steps, ramps, and outside walkways shall be maintained in a safe condition with regard to snow, ice and other hazards.

(2) All patient care equipment shall be tested, calibrated and maintained in accordance with the specifications from the manufacturer.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Testing or calibration procedures conducted by an outside agency or service shall be documented and available for Department review.

(3) Hot water at public and patient faucets shall be delivered between 105 to 120 degrees Fahrenheit.

#### **R432-100-38. Emergency and Disaster Plan.**

(1) The hospital is responsible to assure the safety and well-being of patients. There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption~~[-]~~ such as gas, water, sewer, fuel or electricity interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator or designee is responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters. This plan shall be in writing and list the coordinating authorities by agency name and title. The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

~~[(a)](a)~~ The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management



authorities. The plan shall be available for review by the Department.

(b) The administrator or designee is in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(c) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems shall be readily available to all hospital staff.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency; and

(e) maintenance of safe ambient air temperatures within the hospital.

(4) The hospital shall have an emergency plan that is current and appropriate to the operation and construction of the hospital. The plan shall be approved by the board and the hospital administrator[-and governing board].

(a) The hospital's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) the telephone numbers of individuals [who shall]to be notified in an emergency in order of priority[- Telephone numbers shall be accessible to staff at each nurses station;];

[(vi) method](vi) methods of transporting and evacuating patients and staff to other locations; and

(vii) conversion of the hospital for emergency use.

(b) Emergency telephone numbers shall be accessible to staff at each nurses station.

(c) The hospital shall document emergency events and responses and record patients and staff evacuated from the hospital to another location. Any emergency involving patients shall be documented in the patient record.

[(e)](d) Simulated disaster drills shall be held semiannually for all staff.

[(f)](e) Fire drills and fire drill documentation shall be in accordance with [the]R710-4, State of Utah Fire Prevention Board.

(5) There shall be a fire emergency evacuation plan[;] written in consultation with qualified fire safety personnel. The evacuation plan shall be posted in prominent locations throughout the hospital.

**[R432-100-39. Respite Services.**

—(1) A rural general acute hospital, with an approved swing bed designation, may provide respite services to provide intermittent;

time limited care to give primary caretakers relief from the demands of caring for a person:

—(2) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14 days for any single respite stay. Stays which exceed 14 days are a hospital admission, and are subject to the admission requirements of R432-100:

—(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

—(4) The hospital shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

—(5) The hospital must complete the following:

—(a) A Level 1 Pre-admission Screening upon the person's admission for respite services:

—(b) A service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

—(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

—(a) Medication administration;

—(b) Notification of a responsible party in the case of an emergency;

—(c) Service agreement and admission criteria;

—(d) Behavior management interventions;

—(e) Philosophy of respite services;

—(f) Post-service summary;

—(g) Training and in-service requirement for employees; and

—(h) Handling patient funds.

—(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

—(8) The facility shall maintain a record for each patient who receives respite services which includes:

—(a) Service agreement;

—(b) Demographic information and patient identification data;

—(c) Nursing notes;

—(d) Physician treatment orders;

—(e) Records made by staff regarding daily care of the patient in service;

—(f) Accident and injury reports;

—(g) Post-service summary.

—(9) If a patient has an advanced directive the facility shall file a copy of the directive in the record and inform staff.

—(10) Retention and storage of records shall comply with R432-100-36.

—(11) Confidentiality and release of information shall comply with R432-100-36.]

**KEY: health facilities**

**1998** 26-21-5

**Notice of Continuation December 15, 1997** 26-21-2.1

26-21-20



Insurance, Administration
R590-186
Bail Bond Surety Business

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 21162
FILED: 07/31/1998, 13:13
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes uniform criteria and procedures for the initial and renewal licensing of a bail bond surety company and sets standards of conduct for those in the bail bond surety business in the State of Utah.

SUMMARY OF THE RULE OR CHANGE: The following changes were suggested at the hearing held for this rule July 8, 1998. (1) Subsection R590-186-4(1)(c)(iv) has been moved to R590-186-4(1)(e); (2) In Subsection R590-186-4(2)(a), the term "qualified Utah financial institution" has been eliminated and a broader statement inserted - "an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah"; (3) In Subsection R590-186-5(2) the word "change" has been changed to "changes"; (4) Subsections R590-186-7(19) and R590-186-7(20) have been changed to clarify that it is unprofessional conduct when an "unlicensed" person signs, executes, or issues a bond; (5) Subsection R590-186-7(21) is new and states that it is unprofessional conduct for a licensed agent to execute a bond at the time of issue without countersigning it; and (6) Subsection R590-186-9(2) has added the wording to the "Ratio" column heading "Ratio of Outstanding Bond Obligations to Letter of Credit Limit or Net Worth."

(DAR Note: The original proposed new rule upon which this change in proposed rule is based was published in the June 1, 1998, issue of the Utah State Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-35-104, 31A-35-301, 31A-35-401, and 31A-35-406

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: None of these changes will add or take away from the state budget. They do not change the intent or duties of the original filing of this rule, just clarify it.

LOCAL GOVERNMENTS: This rule does not affect the local government at all, just state.

OTHER PERSONS: The wording changes in this rule are for clarification purposes and do not increase or decrease costs to bail bondsmen or the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The wording changes in this rule are for clarification purposes and do not increase or decrease costs to bail bondsmen or the public.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe the wording changes here are simply for clarification and will not create

any additional costs or credits to the state or local government, the bail bond business, or the public.

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

Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/16/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/18/1998

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-186. Bail Bond Surety Business.

.....

R590-186-4. Initial Company License.

(1) Persons desiring to become licensed as bail bond surety companies shall file with the Bail Bond Surety Oversight Board (Board) the application packet for a Certificate of Authority as a bail bond surety company which can be obtained from the Insurance Department and requires the following information:

(a) the name, address, and telephone number of the bail bond surety company;

(b) the name, date of birth, social security number of the principals or officers in the company;

(c) a statement whether the applicant:

(i) is doing business under only one name in the State of Utah and has complied with state and local business regulations, including filing with the appropriate authority, if doing business under an assumed name;

(ii) has ever been refused a license or had a license revoked by any public authority;

(iii) has engaged in any unprofessional conduct as described in this rule;

(iv) shall affirm that the applicant has not willfully misstated or negligently reported any material fact in the application or procured a misstatement in the documents supporting the application;

(v)(iv) is the subject of any outstanding civil judgement, or has been convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;

(vi)(v) has failed to report, or to preserve, or to retain separately, any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

~~(vii)~~(vi) has an outstanding judgement on a bail forfeiture, which judgement is or has been subject to execution; and  
~~(vii)~~(vii) is the holder of real or personal property within the state.

(d) ~~[A]~~a statement of the number of years the applicant has done business as a bail bond agent or as a bail bond surety company in this or another state[-];

(e) a statement affirming that the applicant has not willfully misstated or negligently reported any material fact in the application or procured a misstatement in the documents supporting the application.

(2) The applicant shall pay the annual license fee of \$500 and provide at least one of the following:

(a) If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of \$250,000 assigned to the State of Utah from a [qualified Utah financial institution]an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least \$250,000, including a minimum of \$50,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to the date of the application and an appraisal dated not more than two years prior to the date of the application.

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide:

(i) a Qualifying Power of Attorney issued by the bail bond surety insurer; and

(ii) a copy of the bail bond surety insurer's Utah Certificate of Authority indicating that the insurance company is in good standing and is authorized to write bail bond policies in this state.

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a certificate of authority.

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval.

**R590-186-5. Company License Renewal.**

A licensed bail bond surety company shall renew its Certificate of Authority on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application packet in a form approved by the commissioner and pay the required annual licensing fee. The renewal packet contains all of the information required in the initial application packet described in R590-186-4(1), plus the additional information described in this section;

(2) if the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds, a statement that no material ~~change~~changes have occurred negatively affecting

the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(3) property bail bond surety companies shall also provide:

(a) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least \$250,000, at least \$50,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(b) every third renewal, a preliminary title report dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant; or

(c) every sixth renewal, a preliminary title report and a current appraisal dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant.

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**R590-186-7. Unprofessional Conduct.**

Persons in the bail bond surety business may not engage in unprofessional conduct. For purposes of this rule, unprofessional conduct means the violation of any applicable insurance law, rule, or valid order of the commissioner, or the commission of any of the following acts by bail bond sureties, by bail bond surety agents or by bail bond enforcement agents:

(1) having a license as a surety revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary;

(3) willfully misstating or negligently reporting any material fact in the initial or renewal Certificate of Authority application or procuring a misstatement in the documents supporting the initial or renewal application;

(4) being the subject of any outstanding civil judgment which would reduce the surety's net worth below the minimum required for licensure, or being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury. If the bail bond surety company or one of its bail bond surety agents or bail bond enforcement agents has been convicted of such an offense or the subject of any such judgment, they may present evidence regarding the circumstances of the conviction or judgment. The Board may take this evidence into consideration in determining whether such conviction requires referral to the commissioner;

(5) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(6) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;

(7) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration of the bond and upon payment of all fees owed to the bail bond agent, whichever is later;

(8) having an outstanding judgment on a bail forfeiture, which judgment is or has been subject to execution;

(9) failing to advise the insurance commissioner of any change that has reduced the surety's net worth below the minimum required for licensure;

(10) using a relationship with any person employed by a jail facility to obtain referrals;

(11) offering consideration or gratuities to jail personnel or peace officers under any circumstances which would permit the inference that said consideration was offered to induce bonding referrals or recommendations;

(12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:

(a) the amount of the bail;

(b) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;

(c) the additional collateral, if any, that will be held by the surety;

(d) the incarcerated person's obligations to the surety and the court;

(e) the conditions upon which the bond may be revoked;

(f) any additional charges or interest that may accrue

(g) any co-signors or indemnitors that will be required; and

(h) the conditions under which the bond may be exonerated and the collateral returned.

(13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;

(14) using a bail bond agent not contracted and appointed by the bail bond surety company;

(15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;

(16) requiring unreasonable collateral security;

(17) failing to provide an itemized statement of all expenses deducted from collateral, if any;

(18) requiring as a condition of his executing a bail bond that the principal agree to engage the services of a specified attorney;

(19) ~~signing, executing, or issuing bonds with endorsements in blank, or~~ preparing or issuing fraudulent or forged bonds or power of attorney;

(20) signing, executing, or issuing bonds by an unlicensed person;

(21) executing bond without countersignature by a licensed agent at time of issue;

(22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond surety company, bail bond surety insurer or other person who is entitled to receive them; and

~~(21)~~(23) failing to comply with the provisions of the laws of this state, or rule, or order of the insurance commissioner for which issuance of the certificate of authority could have been refused had it then existed and been known to the Board.

#### **R590-186-8. Investigating~~of~~ Unprofessional Conduct.**

The Board shall investigate allegations of unprofessional conduct on the part of any bail bond surety, bail bond surety agent, or bail bond surety enforcement agent. Complaints alleging unprofessional conduct shall be made in writing, signed by the complainant, and addressed to the Board at the Department of Insurance.

1. Investigations performed by the Board shall be completed in the following manner:

a. Upon receipt of a complaint of unprofessional conduct, the Board shall provide a copy of the complaint to the person against whom the complaint was made, and if warranted to the person's surety. The Board may make redactions to the copy of the complaint mailed under this subsection that may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.

b. The subject of the complaint shall provide to the Board a written response to the complaint within 15 days of the date the complaint was mailed to him.

c. At the next meeting of the Board after the expiration of 15 days after mailing the complaint or after receiving the response to the complaint, which ever is earlier, the Board shall review the complaint and the response to determine whether the allegations appear to have merit. If the Board determines that the complaint has no merit, it may close its file on the matter without further action. If the Board determines that the allegations appear to have merit, the Board shall conduct further investigation of the matter.

d. In investigating allegations that appear to have merit, the Board may take and record witness statements under oath and may request any documents or other evidence from any person, including necessary financial records. Witnesses may be compensated for their appearances as specified in 31A-2-301. The Board may request a Subpoena from the Commissioner to compel the production of documents or other evidence or to compel the testimony of a witness.

e. After the Board completes its investigation, it shall:

i. close the investigation without further action if the allegations have been shown to be unfounded or if the matter complained of is satisfactorily resolved and the Board believes that no further action is necessary; or

ii. if the investigation shows that unprofessional conduct did occur that requires the imposition of sanctions, it shall compile the evidence necessary to pursue the matter in an administrative proceeding by the Department of Insurance, and shall make a written report of its findings and of its recommendations for the penalties to be applied, and forward the report and evidence to the Commissioner for further action within 15 days of the conclusion of the investigation.

2. Except for matters referred to the Commissioner for further proceedings, the Board shall retain a file on each of the investigations it conducts concerning unprofessional conduct for a period of 5 years. Files regarding investigations conducted by the Board shall be classified as protected under Governmental Records Access and Management Act (GRAMA).

#### **R590-186-9. Bonding Limits.**

(1) An insurance bondsman may not maintain outstanding bail bond obligations in excess of the amount allowed by the insurance company.

(2) A letter of credit bondsman and/or a property bondsman may not maintain outstanding bail bond obligations in excess of the amounts provided below:

TABLE	
Months Licensed In Utah	Ratio of Outstanding Bond Obligations to <u>Letter of Credit</u> Limit or Net Worth
0 to 36	5 to 1
Over 36	10 to 1

.....

**KEY: insurance  
1998**

**31A-35-104  
31A-35-301  
31A-35-401  
31A-35-406**



Insurance, Administration  
**R590-187**  
 Assessment of Title Insurance  
 Agencies and Title Insurers for Costs  
 Related to Regulation of Title  
 Insurance

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 21204  
FILED: 07/31/1998, 13:13  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the comment period the department received suggested changes that it has drafted into the newly revised rule.

SUMMARY OF THE RULE OR CHANGE: Section R590-187-5 have been added. Section R590-187-2 has been expanded to include how the assessment to the title insurers is to be determined. Section R590-187-3 excludes the specific salary amount and expenses to avoid the need to revise the rule when they change.

**(DAR Note:** The original proposed new rule upon which this change in proposed rule is based was published in the July 1, 1998, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-23-315

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: The changes were for reasons of clarification and will have no additional impact on the state's budget.
- ❖LOCAL GOVERNMENTS: Local government is not impacted by this rule or the current changes.
- ❖OTHER PERSONS: The changes were for reasons of clarification and will have no additional impact on the insurance industry or consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes were for reasons of clarification and will have no additional impact on the insurance industry or consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The revisions were made to clarify the time period used for calculating the title insurer assessment that is based on premium. These changes will not create any additional costs or credits to anyone.

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

Insurance  
Administration  
3110 State Office Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 09/16/1998.

THIS RULE MAY BECOME EFFECTIVE ON: 09/18/1998

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**  
**R590-187. Assessment of Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance.**

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**R590-187-2. Purpose.**

The purpose of this rule is:

- (1) to establish the costs and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23, Parts III and IV related to the marketing of title insurance;
- (2) to determine a filing date for each title insurance agency or insurer to report the number of counties in which a title insurance agency or a title insurer maintains an office to the commissioner;[~~and~~]
- (3) to establish a deadline for the payment of the assessments[-]; and
- (4) to determine the premium year used in calculating the assessment of title insurers.

**R590-187-3. Costs and Expenses.**

(1) The amount of costs and expenses that will be covered by the assessment imposed by 31A-23-315 for the fiscal year 1999 will consist of the following:

- (a) the salary and state paid benefits for an Insurance Department, Compliance and Enforcement Investigator I[~~—The expenditure for the fiscal year 1999 will be \$37,600~~];

(b) data processing expense [~~of \$3,000~~]for the purchase of a computer and associated data processing equipment; and

(c) a capital outlay [~~of \$3,600~~]for the investigator’s office space.

(2) The amount of costs and expenses that will be covered by the assessment imposed by 31A-23-315 for the fiscal years 2000 and 2001 will consist of the salary and state paid benefits for an Insurance Department, Compliance and Enforcement Investigator I as determined by the department’s budget approved by the Utah State Legislature and would include any salary increases or increases in benefits.

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**R590-187-5. Title Insurer Assessment.**

The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year. The direct premiums written shall be taken from the insurers annual statements for that year.

**R590-187-6. Assessment Payment Deadline.**

(1) Assessments shall be paid within 45 days of the assessment date.

(2) A fee payment for the assessment, which is delivered by mail, will be considered to have been paid as of the date of the postmark.

(3) Payment by check.

(a) Checks shall be made payable to the Utah Insurance Department.

(b) A check which is dishonored in the process of the collection will not constitute payment of the assessment. Tender of a check to the department that is subsequently dishonored is a violation of this rule.

**End of the Notices of Changes in Proposed Rules Section**

**R590-187-[6]7. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance  
1998**

**31A-23-315**



## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (1996)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (1996); and *Utah Administrative Code* Section R15-4-8.

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### Pardons (Board of), Administration **R671-205** Credit for Time Served

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 21310  
FILED: 07/17/1998, 12:38  
RECEIVED BY: NL

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Provides a mechanism for the Board of Pardons and Parole to grant credit for time served in criminal cases which affects the expiration dates of offenses. The existing rule expired on July 15, 1998, and this action reinstates the rule.

SUMMARY OF THE RULE OR CHANGE: Provides a mechanism for the Board of Pardons and Parole to grant credit for time served in criminal cases which affects the expiration dates of sentences.

**(DAR Note:** A corresponding proposed new rule is under DAR No. 21311 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 77-27-7 and 77-27-9

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Without the ability to grant credit for time served, incarceration may be extended beyond what is appropriate which could extend an offender's length of incarceration. This will result in additional costs to the state for the housing of inmates. In addition, there may be

litigation costs due to credit for time served not being granted along with potential monetary settlements if credit for time served is not given.

❖LOCAL GOVERNMENTS: Many offenders are housed in county jails, and without the ability to grant credit for time served lengths of incarceration of offenders may be longer.

❖OTHER PERSONS: Offenders may remain incarcerated longer than what justice and equity require.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Unless this rule is implemented offenders may be required to spend additional time incarcerated which could affect opportunities to rehabilitate such as education, employment, therapy, and the ability to pay restitution.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not have a direct negative fiscal impact on business.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare; and would place the agency in violation of federal or state law.

Credit for time served directly affects length of incarceration of inmates which impacts public safety, health, and welfare. The Board may be unable to grant credit for time served without an administrative rule authorizing the same.

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

Pardons (Board of)  
Administration  
No. 300  
448 East 6400 South

Murray, UT 84107, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
John Green at the above address, by phone at (801) 261-6470, by FAX at (801) 261-6481, or by Internet E-mail at bpmain.jgreen@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 07/17/1998

AUTHORIZED BY: Michael R. Sibbett, Chairman

**R671. Pardons (Board of), Administration.**

**R671-205. Credit for Time Served.**

**R671-205-1. Policy.**

(1) Credit for time served will be granted against the expiration date on a crime of commitment when:

(a) a conviction is set aside and there is a subsequent commitment for the same criminal conduct;

(b) a commitment is made to the Utah State Hospital pursuant to a "guilty and mentally ill" conviction;

(c) time is spent in custody outside the State of Utah based solely on the Utah warrant;

(d) the Board deems such credit just under the circumstances;

or  
(e) credit is otherwise required by law.

(2) No credit will be given for time spent in custody at the Utah State Hospital or comparable non-prison, psychiatric facility while the offender is judicially-declared incompetent.

(3) If no record of official detention time is found in the Board file, the Board will presume that none was served. In cases where the offender desires credit, the burden is on the offender to request it and to provide copies of records supporting the claim of time spent in custody.

**KEY: capital punishment, prison release, parole, government hearings**

**July 17, 1998**

**77-27-7**

**77-27-9**

**77-19-7**

Pardons (Board of), Administration  
**R671-312**  
Commutation Hearings for Death  
Penalty Cases

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 21312  
FILED: 07/17/1998, 12:57  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Provides the process to be used in commutation hearings for death penalty cases.

SUMMARY OF THE RULE OR CHANGE: Outlines the procedure to be used by the Board for commutation hearings in death penalty cases.

**(DAR Note:** A corresponding proposed new rule is under DAR No. 21313 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-19-7, and Article VII, Section 12, Utah Constitution

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Without a constitutional procedure being outlined on how to proceed in commutation hearings in death penalty cases, the state would be subject to law suits which could result in legal fees and possible punitive and compensatory damages. The Board budgets \$2,500.00 per commutation hearing that is set aside in our legal contract not anticipating more than two commutation hearings in any given fiscal year.

❖LOCAL GOVERNMENTS: None--this rule only affects state government.

❖OTHER PERSONS: Offenders are entitled to constitutionally protected rights which could have a fiscal impact on them if they are not outlined by administrative rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Unless this rule is implemented, offenders may not know how to proceed which could increase legal fees and reduce their opportunity to present issues before the Board.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not have a negative fiscal impact on business.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare; and place the agency in violation of federal or state law.

The administrative rule for commutation hearings in death penalty cases outlines the procedure to be used by the Board in commutation hearings in death penalty cases.

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

Pardons (Board of)  
Administration  
No. 300  
448 East 6400 South  
Murray, UT 84107, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
John Green at the above address, by phone at (801) 261-6470, by FAX at (801) 261-6481, or by Internet E-mail at bpmain.jgreen@state.ut.us.



INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 07/17/1998

AUTHORIZED BY: Michael R. Sibbett, Chairman

**R671. Pardons (Board of), Administration.**

**R671-312. Commutation Hearings for Death Penalty Cases.**

**R671-312-1. Applicability of Rules to Petitioners.**

The limitations on the authority of the Board that are imposed by Utah Code Ann. Section 77-27-5 (Supp. 1994) do not apply to a commutation proceeding pertinent to any person sentenced to the death penalty before April 27, 1992. Procedures applicable to commutation hearings of pre-April 27, 1993 death penalty inmates will be governed by Section R671-312-2. Procedures to be used in the commutation hearing of any person sentenced to the death penalty after April 26, 1992 are governed by Section R671-312-3.

**R671-312-2. Commutation Procedures Applicable to Inmates Sentenced to Death Before April 27, 1992.**

(1) A petition for commutation may be filed anytime after the sentencing court has issued an order of execution after completion of the inmate's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack. The inmate shall file his petition no later than seven days after the sentencing court signs a warrant setting a new execution date. The inmate shall mail a copy, by U.S. Mail, postage prepaid, to the attorney representing the state. If the execution date is stayed by any court between the time of the sentencing court's issuance of the warrant and the beginning of the commutation hearing, the commutation proceeding shall terminate. If the execution date is stayed during the commutation hearing, the hearing shall continue and the Board shall render its decision in accordance with this rule.

(2) The petition shall include:

(a) the petitioner's name and address of any attorney who is requesting the petitioner in the commutation proceeding;

(b) a statement of reasons why the petitioner believes the sentence of death should be commuted;

(c) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses it intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition will include a statement reciting what, if any, new and significant information exists currently and why the information requires a new hearing.

(4) The Board may temporarily stay an execution to fully hear the petition for commutation.

(5) Within seven days of receiving the petition, the Attorney General or County Attorney shall send the Board and the petitioner copies of written evidence, names of witnesses, and summary of anticipated testimony that he intends to rely on to rebut petitioner's claim that the sentence of death should be commuted. The Board may request either the petitioner or the state to provide additional information.

(6) The day after receiving the state's response, the Board will hold a pre-hearing conference to limit the number of witnesses that

each side calls, clarify the issues that will be addressed, and take whatever other action it considers necessary and appropriate to control and direct the proceedings.

(7) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the inmate, the inmate's representative, or the state's representative. The role of the state's representative is limited to rebutting the petitioner's claim and otherwise assisting the Board to determine all facts relevant to the inquiry.

(8) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case. The Board will record the commutation hearing in accordance with Utah Code Ann. Section 77-27-8(2). The Board's policy on News Media and Public Access will govern attendance. During the hearing, the Board may take whatever actions it considers necessary and appropriate to maintain order.

(9) The Board will reconvene in open session to announce and distribute its written decision.

**R671-312-3. Commutation Procedures Applicable to Persons Sentenced to Death After April 27, 1992.**

(1) A petition for commutation may be filed anytime after the sentencing court has issued an order of execution after completion of the inmate's appeal from his conviction. For purposes of this rule, "appeal" does not include any action for post-conviction relief or any other form of collateral attack. The inmate shall file his petition no later than 23 days before the scheduled execution date and shall mail a copy by U.S. Mail, postage prepaid, to the attorney representing the state. If the execution date is stayed by any court between the time of the sentencing court's issuance of the warrant and the beginning of the commutation hearing, the commutation proceeding will terminate. If the execution date is stayed during the commutation hearing, the hearing will continue and the Board will render its decision in accordance with this rule.

(2) The petition shall include:

(a) the petitioner's name and address of any attorney who is requesting the petitioner in the commutation proceeding;

(b) a statement of reasons why the petitioner believes the sentence of death is not appropriate due to the specific circumstances pertinent to him;

(c) whether any of the reasons stated as grounds for the have been reviewed in the judicial process;

(d) if new information is alleged, a statement why the information is considered new, why it could not have been reviewed in the judicial process, and why the information is not still subject to judicial review;

(e) if legal or constitutional reasons are claimed, a statement explaining why Utah Code Ann. Section 77-27-5.5(6) does not prohibit the Board from considering the issue; and

(f) if petitioner has received one commutation hearing, the petition shall include a statement explaining what, if any, new and significant information exists that justifies a second hearing; and

(g) copies of all written evidence upon which petitioner intends to rely at the hearing along with the names of all witnesses it intends to call and a summary of their anticipated testimony.

(2) If the Board believes that it cannot consider the claims pursuant to section 77-27-5.5, it will deny the petition for a hearing, determining that it does not present a substantial issue.

(3) If the Board grants the petition, a commutation hearing shall be scheduled as soon as reasonably possible.

(4) The Board may temporarily stay an execution to fully hearing the petition for commutation.

(5) Within seven days of receiving the petition, the Attorney General or County Attorney shall provide to the Board and the petitioner copies of all written evidence, names of witnesses, and summary of anticipated testimony. The Board may request additional information from either side.

(6) The day after receiving the state's response, the Board shall hold a pre-hearing conference to limit the number of witnesses that each side calls, clarify the issues that will be addressed, and take whatever other action it considers necessary and appropriate to control and direct the proceedings.

(7) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the inmate, the inmate's representative, and the state's representative. The role of the State's representative is limited to rebutting petitioner's claim that his sentence should be commuted and otherwise assisting the board to determine all facts relevant to the inquiry and petitioner's claims.

(8) The Board will place all witnesses under oath and may impose a time limit on each side for presenting its case. The Board will record the commutation hearing in accordance with Utah Code Ann. Section 77-27-8(2). The Board's policy on News Media and Public Access will govern attendance. During the hearing, the Board may take whatever actions it considers necessary and appropriate to maintain order.

(9) The Board will reconvene in open session to announce and distribute its written decision.

**KEY: capital punishment**  
**July 17, 1998**

**77-19-7**  
**Art VII, Sec 12**



**Public Service Commission,  
Administration  
R746-360  
Universal Public Telecommunications  
Service Support Fund**

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 21317  
FILED: 07/22/1998, 14:13  
RECEIVED BY: NL

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The emergency rule is proposed to allow further Commission consideration of comments filed by participants in a current Commission rulemaking proceeding. These comments are directed to competing cost proxy models available for

inclusion in a final rule and requests by some affected telecommunications corporations to be exempted from various provisions of the proposed rule. The Commission has not been able to promulgate a final rule and an emergency rule is required to continue funding and disbursement of funds to support the availability of telecommunication services in high cost areas of the state.

SUMMARY OF THE RULE OR CHANGE: The rule provides for the collection, funding, and disbursement mechanisms for the Universal Public Telecommunications Service Support Fund, which are required by Section 54-8b-15.

(DAR Note: The first proposed new rule for R746-360 was filed to replace R746-408 under DAR No. 20106 in the November 1, 1997, issue of the *Utah State Bulletin*, however, the filing lapsed. A 120-day (emergency) rule was filed for R746-360 under DAR No. 20598 in the January 15, 1998, issue of the *Utah State Bulletin* that was effective December 31, 1997. The proposed new rule was also filed again for R746-360 under DAR No. 20599 in the January 15, 1998, issue of the *Utah State Bulletin*. A second emergency rule was filed (DAR No. 20956) which superceded the first and was published in the April 15, 1998, issue of the *Utah State Bulletin* that was effective March 31, 1998. A change in proposed rule on the new rule filing (DAR No. 20599) was published in the May 1, 1998, issue of the *Utah State Bulletin*. This third emergency rule filing supercedes the second one.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-1-1 and 54-8b-15

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--state agencies are already operating an existing fund. The Division of Public Utilities and Public Service Commission have the same responsibilities under the emergency rule as under the prior universal service fund. The scope or extent of the duties and responsibilities are not increased or diminished. Hence, the Commission concludes that there will be no increased costs or savings.

❖LOCAL GOVERNMENTS: None--no responsibilities, activities, or other undertakings by local government entities are required by the rule. Since the rule does not change any local government activity, no anticipated costs or savings are projected.

❖OTHER PERSONS: None--affected companies are already participating in an existing fund. The Commission has established a funding mechanism percentage under the rule which will generate the same dollar amount of universal service fund revenues as was collected under the prior universal service fund's access minute charges funding mechanism. Administrative functions under the rule are mostly identical to functions performed under the prior universal service fund program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No new costs--a Universal Service Fund has operated in the state since 1989. Telecommunications companies have participated in the fund since its inception. State statutory provisions required changes in the funding methodology and disbursement

process, which change some of the internal operation of the fund, but not the costs associated with its operation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission has not been able to promulgate a final rule, dealing with the Universal Public Telecommunications Services Support Fund, that the Commission believes adequately addresses the comments of rulemaking participants and the statutory requirements. The Commission has made provisions for continued funding, collection, and disbursement for affected telecommunications companies and customers during the pendency of the rulemaking proceeding. Funds continue to be collected and disbursed to support telecommunication services in high cost areas of the state.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The Commission has not been able to determine the provisions of a final rule, through the Commission's current rulemaking proceeding, which the Commission believes adequately addresses the concerns and issues raised by the participants submitting comments in the rulemaking proceeding. The Commission's deliberations are being further delayed by the failure of participants to agree upon a cost proxy model and methodology to determine the appropriate costs for fund eligibility and disbursements. Statutory requirements require an operating fund; absent a final rule, this emergency rule is required to comply with the statutory requirements.

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

Public Service Commission  
Administration  
Fourth Floor, Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT 84111, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Stroud at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or by Internet E-mail at pupsc.bstroud@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 07/28/1998

AUTHORIZED BY: Barbara Stroud, Paralegal

**R746. Public Service Commission, Administration.**  
**R746-360. Universal Public Telecommunications Service Support Fund.**  
**R746-360-1. General Provisions.**

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the

"universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates paid by service end-users;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

**R746-360-2. Definitions.**

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission and shall be the rate against which the USF proxy cost model results shall be compared for the purpose of computing USF support. The Affordable Base Rate does not include the applicable USF retail surcharge.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing all revenue derived from a telecommunications corporation's provision of public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area. When a telecommunications corporation does not have access lines in a designated support area, the average revenue per line for that telecommunications corporation will be based on the simple average of the average revenue per line determinations of all other telecommunications corporations which have access lines in the designated support area.

C. Basic Telecommunications Service -- means a flat-rated local exchange service consisting of access to the public switched network without additional charge for usage or the number of local calls placed or received; touch-tone, or its functional equivalent; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements

purchased from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements purchased from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of basic local exchange service. The Commission will determine the appropriate geographic area to be used in determining basic local exchange service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Qualifying Telecommunications Corporation -- means a telecommunications corporation that the Commission has designated an eligible telecommunications carrier, pursuant to 47 U.S.C. Section 214(e), who may receive monies from the federal and state universal service funds.

J. Retail Provider -- means telecommunications corporations, interexchange carriers, resellers, alternate operator service providers, commercial mobile radio service providers, radio common carriers, aggregators or any other person or entity providing telecommunications services that are used or consumed by an consumer or end-user.

K. Trust Fund -- means the Trust Fund established by 54-8b-12.

L. USF Proxy Model Costs -- means the average total, jurisdictionally unseparated, cost estimate for basic telecommunications service, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission.

M. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

**R746-360-3. Transition from 54-8b-12 to 54-8b-15.**

A. Phase out of 54-8b-12 Trust Fund and Transfer of Trust Fund Funds -- In order to permit telecommunications corporations to make the transition to the fund created by 54-8b-15 and this rule:

1. The 54-8b-12 Trust Fund mechanisms shall continue until May 31, 1998, upon which date they shall cease. Funds derived from these funding mechanisms will be deposited in the USF.

2. Balances remaining in the 54-8b-12 Trust Fund as of June 1, 1998, plus remittances of any funds pursuant to the 54-8b-12 Trust Fund shall be transferred to the USF.

B. Two-Year Continuation of Equivalent Trust Fund Funding -- Upon written notification to the Commission, telecommunications corporations that received 54-8b-12 Trust Fund support in 1997 may elect to receive support equivalent to what they would have received from the 54-8b-12 Trust Fund rather than

support pursuant to the 54-8b-15 USF. These companies may continue to receive this Trust Fund equivalent support until December 31, 1999. During this time period, these companies may elect to end this equivalent support and begin to receive support pursuant to the 54-8b-15 USF by submitting a written notification to the Commission 30 days prior to the beginning of the 54-8b-15 USF support. Funds for equivalent Trust Fund support will be provided from the USF.

**R746-360-4. Duties of Administrator.**

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Annual Review -- The administrator, under the direction of the Commission, shall perform an annual review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

**R746-360-5. Application of Fund Surcharges to Customer Billings.**

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues

to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

**B. Surcharge Based on a Uniform Percentage of Retail Rates** -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

**C. Initial Surcharge** -- The initial surcharge to be assessed beginning June 1, 1998, shall equal one percent of billed intrastate retail rates.

#### **R746-360-6. Fund Remittances and Disbursements.**

**A. Remitting Surcharge Revenues** -- Retail providers, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the administrator monthly.

**1.** Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

**2.** Net fund contributions shall be remitted to the administrator within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

**3.** The administrator will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

**B. Distribution of Funds** -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

#### **R746-360-7. Eligibility for Fund Distributions.**

**A. Qualification** -- A telecommunications corporation shall be in compliance with Commission orders and rules and have its average revenue per line less than the USF cost proxy model costs for each designated support area in which it desires to qualify to receive support from the fund. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

**B. Retail Rate Ceiling** -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rate for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

**C. Lifeline Requirement** -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

**D. Exclusion of Resale Providers** -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

#### **R746-360-8. Calculation of Fund Distributions.**

**A. Use of Proxy Cost Models** -- The USF proxy cost model(s) selected by the Commission, the Affordable Base Rates, and

average revenue per line will be used to determine fund distributions within designated support areas.

**B. Impact of Other Funding Sources** -- The USF proxy cost estimate for a designated support area will be reduced by the amount that basic telecommunication service costs are recovered through interstate cost allocations, from the federal USF, pursuant to 47 U.S.C. Section 254, or from any other mechanism by which intrastate costs are calculated from total costs.

**C. Determination of Support Amounts** -- Each qualifying telecommunications corporation shall receive funds to support each primary residential line in active service which it furnishes in each designated area for which the monthly intrastate USF proxy model cost exceeds the Affordable Base Rate established for that area. Monies from the fund will equal that numerical difference unless average revenue per line for the designated support area exceeds the USF proxy model cost results.

**D. Lifeline Support** -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

**E. Exemptions** -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

#### **R746-360-9. One-Time Distributions from the Fund.**

**A. Applications for One-Time Distributions** -- Telecommunications corporations or potential customers not presently receiving service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

**1.** In considering the one-time distribution application, the Commission will examine relevant factors including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, the provisions for service or line extension currently available, and whether the one-time distribution is in the public interest.

**B. Maximum Amount** -- The maximum one-time distribution will be no more than that required to make the net investment equivalent to the relevant proxy model cost estimate.

**C. Impact of Distribution on Rate of Return Companies** -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

**D. Notice and Hearing** -- Following notice that a one-time distribution application has been filed, a LEC may request a hearing or seek to intervene to protect its interests.

**E. Bidding for Unserved Areas** -- A telecommunications corporation will be selected to serve in an unserved area on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

**R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.**

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

**R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.**

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996 and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

**KEY: public utilities, telecommunications, universal service\***

**July 28, 1998**

**54-7-25**

**54-7-26**

**54-8b-12**

**54-8b-15**



**End of the Notices of 120-Day (Emergency) Rules**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

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## Commerce, Occupational and Professional Licensing **R156-53** Landscape Architects Licensing Act Rules

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21318  
FILED: 07/23/1998, 09:56  
RECEIVED BY: NL

### 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: Title 58, Chapter 53 provides for the licensing of landscape architects. Subsection 58-1-106(1) provides the Division may adopt and enforce rules to administer Title 58. Subsection 58-53-3(3) provides that the Landscape Architects Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend to the Division Director appropriate rules. These rules were enacted to clarify the provisions of Title 58, Chapter 53 with respect to landscape architects.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since these rules were originally enacted or last reviewed, the rules have been entirely revised so that they conform with the Division's model rule format and due to legislative amendments made to Title 58, Chapters 1 and 53. The most recent amendments were made effective July 7, 1998 due to changes to Title 58, Chapter 53 by the 1998 Legislature. No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 53 with respect to landscape architects.

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

Commerce  
Occupational and Professional Licensing  
Fourth Floor, Heber M. Wells Building  
160 East 300 South  
PO Box 146741  
Salt Lake City, UT 84114-6741, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Fairhurst at the above address, by phone at (801) 530-6621, by FAX at (801) 530-6511, or Internet E-mail at [brdopl.fairhur@email.state.ut.us](mailto:brdopl.fairhur@email.state.ut.us).

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 07/23/1998



## Commerce, Occupational and Professional Licensing **R156-68** Utah Osteopathic Medical Practice Act Rules

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21319  
FILED: 07/23/1998, 09:56  
RECEIVED BY: NL

**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: Title 58, Chapter 68 provides for the licensing of osteopathic physician and surgeons. Subsection 58-1-106(1) provides the Division may adopt and enforce rules to administer Title 58. Subsection 58-68-201(3)(a) provides that the Osteopathic Physician and Surgeons Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend to the Division Director appropriate rules. These rules were enacted to clarify the provisions of Title 58, Chapter 68 with respect to osteopathic physician and surgeons.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since these rules were originally enacted or last reviewed, the rules have been entirely revised so that they conform with the Division's model rule format and due to legislative amendments made to Title 58, Chapters 1 and 68. The rules were last substantively amended in 1996 when R156-12a was renumbered to R156-68 due to legislative enactment of Title 58, Chapter 68. No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 68 with respect to osteopathic physician and surgeons.

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

Commerce  
Occupational and Professional Licensing  
Fourth Floor, Heber M. Wells Building  
160 East 300 South  
PO Box 146741  
Salt Lake City, UT 84114-6741, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Karen Reimherr at the above address, by phone at (801) 530-6767, by FAX at (801) 530-6511, or Internet E-mail at [brdopl.kreimher@email.state.ut.us](mailto:brdopl.kreimher@email.state.ut.us).

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 07/23/1998



Insurance, Administration  
**R590-94**  
Rule Permitting Smoker/Nonsmoker  
Mortality Tables For Use In  
Determining Minimum Reserve  
Liabilities and Nonforfeiture Benefits

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 21338  
FILED: 07/31/1998, 13:13  
RECEIVED BY: NL

**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 is a general rulemaking provision that gives the department the authority to write rules necessary to implement the insurance code. Subsection 31A-22-408(t)(d)(viii)(VI) is the specific rulemaking authority allowing the department to adopt by rule the mortality tables approved by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard and provide more flexible rating of life policies.

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 since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows insurers to provide more flexible rating to their insureds based upon smoker/nonsmoker status. The medical and scientific information available to us today tells us that a person is more likely to be healthier and live longer if they do not smoke.

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

Insurance  
Administration  
3110 State Office Building  
Salt Lake City, UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or Internet E-mail at [jdmain.jwhitby@state.ut.us](mailto:jdmain.jwhitby@state.ut.us).



AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 07/31/1998

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/27/1998

Natural Resources; Oil, Gas and  
Mining; Coal

**R645-102**

Exemption for Coal Extraction Incident  
to Government-Financed Highway or  
Other Construction

**FIVE-YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 21327

FILED: 07/27/1998, 15:17

RECEIVED BY: NL

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the Utah Coal Mining and Reclamation statute and the federal Surface Mining Control and Reclamation Act (SMCRA). The Utah Coal Primacy Program is developed under SMCRA and the state equivalent at Section 40-10-1, et seq.

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 on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to maintain state control over the Coal Regulatory Process in the State of Utah.

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

Natural Resources  
Oil, Gas and Mining; Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple  
PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rdaniels@state.ut.us.

Natural Resources; Oil, Gas and  
Mining; Non-Coal

**R647-1**

Minerals Regulatory Program

**FIVE-YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 21328

FILED: 07/27/1998, 15:17

RECEIVED BY: NL

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule provides the necessary detail to carry out the legislative direction of Section 40-8-1, et seq.

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 on the bulk of rule which is sought to be renewed. The only comments which have been received were on the recent rulemaking amendments to this rule (effective 06/15/98), for the definitions of "sand," "gravel," and "rock aggregate." These comments were to the effect that the proposed rulemaking did not adequately reflect the legislative intent of the statute. With regard to these comments, the Division of Oil, Gas and Mining recommended, and the Board of Oil, Gas and Mining agreed, that the rules did reflect the intent of the legislature and that the rules should be enacted.

**(DAR Note:** The amendment to R647-1-106 was published under DAR No. 20727 in the February 15, 1998, issue of the *Utah State Bulletin*, and is effective as of June 15, 1998.)

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to maintain state control over the Minerals Regulatory Program in the State of Utah.

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

Natural Resources  
Oil, Gas and Mining; Non-Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple

PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Ronald W. Daniels at the above address, by phone at (801)  
538-5316, by FAX at (801) 359-3940, or Internet E-mail at  
rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals  
Research

EFFECTIVE: 07/27/1998

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Ronald W. Daniels at the above address, by phone at (801)  
538-5316, by FAX at (801) 359-3940, or Internet E-mail at  
rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals  
Research

EFFECTIVE: 07/27/1998

Natural Resources; Oil, Gas and  
Mining; Non-Coal  
**R647-2**  
Exploration

**FIVE-YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 21329  
FILED: 07/27/1998, 15:17  
RECEIVED BY: NL

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY  
PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE  
PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule  
provides the necessary detail to carry out the legislative  
direction of Section 40-8-1, et seq.

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 on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE,  
INCLUDING REASONS WHY THE AGENCY DISAGREES WITH  
COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is  
needed to maintain state control over the Minerals  
Regulatory Program in the State of Utah.

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

Natural Resources  
Oil, Gas and Mining; Non-Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple  
PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

Natural Resources; Oil, Gas and  
Mining; Non-Coal  
**R647-3**  
Small Mining Operations

**FIVE-YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 21330  
FILED: 07/27/1998, 15:17  
RECEIVED BY: NL

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY  
PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE  
PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule  
provides the necessary detail to carry out the legislative  
direction of Section 40-8-1, et seq.

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 on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE,  
INCLUDING REASONS WHY THE AGENCY DISAGREES WITH  
COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is  
needed to maintain state control over the Minerals  
Regulatory Program in the State of Utah.

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

Natural Resources  
Oil, Gas and Mining; Non-Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple  
PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Ronald W. Daniels at the above address, by phone at (801)  
538-5316, by FAX at (801) 359-3940, or Internet E-mail at  
rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/27/1998

EFFECTIVE: 07/27/1998

Natural Resources; Oil, Gas and Mining; Non-Coal

**R647-4**

Large Mining Operations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 21331  
FILED: 07/27/1998, 15:17  
RECEIVED BY: NL

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule provides the necessary detail to carry out the legislative direction of Section 40-8-1, et seq.

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 on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to maintain state control over the Minerals Regulatory Program in the State of Utah.

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

Natural Resources  
Oil, Gas and Mining; Non-Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple  
PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

Natural Resources; Oil, Gas and Mining; Non-Coal

**R647-5**

Administrative Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 21332  
FILED: 07/27/1998, 15:17  
RECEIVED BY: NL

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule provides the necessary detail to carry out the legislative direction of Section 40-8-1, et seq.

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 on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to maintain state control over the Minerals Regulatory Program in the State of Utah.

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

Natural Resources  
Oil, Gas and Mining; Non-Coal  
Ste. 1210, Natural Resources Building  
1594 West North Temple  
PO Box 145801  
Salt Lake City, UT 84114-5801, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 07/27/1998

Natural Resources, Parks and Recreation

R651-102

Government Records Access Management Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21314
FILED: 07/21/1998, 13:17
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 63-2-201 gives the public certain rights to access and inspect government records and defines records that are not public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule will continue to allow public access to government records where applicable through due process.

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

Natural Resources
Parks and Recreation
Room 116
1594 West North Temple
Box 146001
Salt Lake City, UT 84114-6001, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or Internet E-mail at nrdomain.dguess@email.state.ut.us.

AUTHORIZED BY: David K. Morrow, Deputy Director

EFFECTIVE: 07/21/1998

Natural Resources, Parks and Recreation

R651-301

State Recreation Fiscal Assistance Programs

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21315
FILED: 07/21/1998, 13:17
RECEIVED BY: NL

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: Sections 63-11a-501 and 63-11-17.8 provide rules which govern procedures for fiscal assistance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule gives procedures for fiscal assistance applications, priorities, and project section selection criteria which apply to riverway enhancement, non-motorized trails, and off highway vehicles.

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

Natural Resources
Parks and Recreation
Room 116
1594 West North Temple
Box 146001
Salt Lake City, UT 84114-6001, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or Internet E-mail at nrdomain.dguess@email.state.ut.us.

AUTHORIZED BY: David K. Morrow, Deputy Director

EFFECTIVE: 07/21/1998

Public Safety, Law Enforcement and  
Technical Services, Regulatory  
Licensing  
**R724-7**

Undercover Driver's License

AUTHORIZED BY: Stuart Smith, Bureau Chief

EFFECTIVE: 07/21/1998



**FIVE-YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 21316  
FILED: 07/21/1998, 16:39  
RECEIVED BY: NL

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule provides assistance and specialized law enforcement services to federal, local, and state agencies as authorized by Subsections 53-4-104(1) and 53-4-104(12) which gives authorization to the Division to conduct criminal investigations and assist other law enforcement agencies. The Division will assist agencies in obtaining undercover driver's licenses for peace officers engaged in undercover criminal investigations. This operation will be administered by the Division through the Bureau of Criminal Identification (BCI). BCI is the most reasonable source to provide this type of service.

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.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to clarify the steps required for a peace officer to obtain an undercover driver's license and the limitations of its use.

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

Public Safety  
Law Enforcement and Technical Services,  
Regulatory Licensing  
Second Floor, Calvin Rampton  
4501 South 2700 West  
Box 148280  
Salt Lake City, UT 84114-8280, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Todd Peterson at the above address, by phone at (801) 965-3810, by FAX at (801) 965-4749, or Internet E-mail at psdomain.psmain.tpeterso@email.state.ut.us.

**End of the Five-Year Notices of Review  
and Statements of Continuation**

## NOTICES OF EXPIRED RULES

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

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### Pardons (Board of)

#### Administration

No. 21300: R671-205. Credit for Time Served.

Enacted: 03/01/88 (No. 9237, Filed 01/20/88 at 3:55 p.m., Published 02/01/88)

Five-Year Review: 07/15/93 (No. 14587, Filed 07/01/93 at 1:15 p.m., Published 07/15/93)

Expired: 07/15/98

**(DAR Note:** A 120-day (emergency) rule (DAR No. 21310) was filed to reenact this rule, R671-205, on 07/17/98. It is effective as of 07/17/98. A proposed new rule (DAR No. 21311) for R671-205 has been filed. Both are in this issue of the *Utah State Bulletin*.)

No. 21301: R671-312. Commutation Hearings for Death Penalty Cases.

Enacted: 07/01/87 (No. 8845, Filed 05/05/87 at 5:00 p.m., Published 05/15/87)

Five-Year Review: 07/15/93 (No. 14588, Filed 07/01/93 at 1:15 p.m., Published 07/15/93)

Expired: 07/15/98

**(DAR Note:** A 120-day (emergency) rule (DAR No. 21312) was filed to reenact this rule, R671-312, on 07/17/98. It is effective as of 07/17/98. A proposed new rule (DAR No. 21313) for R671-312 has been filed. Both are in this issue of the *Utah State Bulletin*.)

**End of the Notices of Expired Rules Section**

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Public Safety

#### Highway Patrol

No. 21176 (AMD): R714-158. Vehicle Safety  
Inspection Program Requirements.  
Published: June 15, 1998  
Effective: July 30, 1998

No. 21197 (REP): R714-400. Compressed and  
Liquefied Gas Fuel Systems.  
Published: July 1, 1998  
Effective: August 4, 1998

### Workers' Compensation Fund

#### Administration

No. 21214 (REP): R980-1. Workers' Compensation  
Fund of Utah Dispute Resolution.  
Published: July 1, 1998  
Effective: August 7, 1998

**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 changes to Utah's administrative rules from January 2, 1998, to the present (current as of August 9, 1998). The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

**DAR NOTE:** Because of space constraints, the Keyword Index is not included in this *Bulletin*.

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.state.ut.us/>).

## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administration</u>					
R13-2	Access to Records	20537	NSC	01/06/98	Not Printed
R13-3	American With Disabilities Act Grievance Procedures	20631	5YR	01/08/98	98-3/89
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	20976	AMD	07/01/98	98-9/3
R15-4-3	Publication Dates and Deadlines	20952	AMD	07/01/98	98-8/2
<u>Facilities Construction and Management</u>					
R23-4	Suspension/Debarment From Consideration for Award of State Contracts	20702	5YR	01/28/98	98-4/128
R23-5	Contingency Funds	20703	5YR	01/28/98	98-4/128
R23-6	Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations	20704	5YR	01/28/98	98-4/129
R23-7	Utah State Building Board Policy Statement Master Planning	20705	5YR	01/28/98	98-4/129
R23-8	Planning Fund Use	20706	5YR	01/28/98	98-4/130
R23-9	Building Board State/Local Cooperation Policy	20707	5YR	01/28/98	98-4/130



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R23-10	Naming of State Buildings	20708	5YR	01/28/98	98-4/131
R23-11	Facilities Allocation and Sale Procedures	20709	5YR	01/28/98	98-4/131
R23-12	State of Utah Parking Policy	21186	5YR	06/01/98	98-12/37
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	21150	5YR	05/15/98	98-11/200
R23-21	Division of Facilities Construction and Management Lease Procedures	20710	5YR	01/28/98	98-4/132
R23-24	Capital Projects Utilizing Non-appropriated Funds	20711	5YR	01/28/98	98-4/132
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R986-305 (Changed to R414-305)	Resources	21168	NSC	06/01/98	Not Printed
R986-306 (Changed to R414-306)	Program Benefits	21169	NSC	06/01/98	Not Printed
R986-307 (Changed to R414-307)	Eligibility Determination and Redetermination	21170	NSC	06/01/98	Not Printed
R986-308 (Changed to R414-308)	Record Management	21171	NSC	06/01/98	Not Printed
R986-309 (Changed to R414-309)	Utah Medical Assistance Program (UMAP)	21172	NSC	06/01/98	Not Printed
R986-310 (Changed to R414-310)	Demonstration Programs	21173	NSC	06/01/98	Not Printed

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