

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is 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 the division's publications, visit: <http://www.rules.state.ut.us/>

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EDITOR'S NOTE

RULEMAKING LEGISLATION EFFECTIVE MAY 1, 1999

UTAH CODE Section 63-46a-11.5 provides that "every [administrative] rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature during its annual general session." The statute requires that "the [Legislature's] Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session." The form of the legislation is a statement that all administrative rules are reauthorized, followed by an exception list of rules, or portions of rules, that are not reauthorized.

During the 1999 General Session, Rep. Martin Stephens sponsored House Bill (H.B.) 193 entitled "Reauthorization of Administrative Rules." This bill reauthorized all rules except a portion of one rule from the Office of Education.

Under Rule R277-458, entitled "70% Utilization of School Buildings," Subsection R277-458-3(C)(3)(a) was not reauthorized. This subsection specified standards for computing student capacity for regular classrooms pursuant to "Section 53A-17a-142 which requires that school buildings operate at no less than 70% of maximum capacity." (Subsection R277-458-2(A))

However, on April 30, 1999, the Office of Education filed a 120-day (emergency) rule and a proposed repeal to immediately and permanently repeal Rule R277-458. Both rulemaking actions are published in this issue of the UTAH STATE BULLETIN—the emergency rule (DAR No. 22024) begins on page 107; the proposed repeal (DAR No. 22025) begins on page 30. As a result of these rulemaking actions Subsection R277-458-3(C)(3)(a) did not exist on May 1, 1999. Therefore, the Division of Administrative Rules took no action pursuant to H.B. 193 to remove the subsection that was not reauthorized.

In addition, H.B. 193 mandated that the Division of Administrative Rules "make amendments to any rules necessary to conform the rule content and structure, including renumbering subsections and deleting cross-references made obsolete by the repeal of . . . Subsection [R277-458-3(C)(3)(a)] . . ." The Division found no other content, structure, subsection numbering, or cross-references that had been made obsolete by the action of H.B. 193 beyond those that appeared in Rule R277-458. Therefore, the Division of Administrative Rules took no action on other rules pursuant to H.B. 193.

The text of H.B. 193 appeared in the March 15, 1999, issue of the UTAH STATE BULLETIN. A copy of the enrolled bill may be obtained from <http://www.le.state.ut.us/~1999/htmldoc/hbillhtm/HB0193S1.htm> or the Office of Legislative Printing, 419 State Capitol, Salt Lake City, UT 84114, (801) 538-1103.

If you have any questions regarding H.B. 193 or the reauthorization process, please contact Kenneth A. Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3218, FAX: (801) 538-1773, or Internet E-mail: asitmain.khansen@email.state.ut.us.

End of the Editor's Notes Section

SPECIAL NOTICES

PROCLAMATION

WHEREAS, since the close of the 1999 General Session of the 53rd Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, MICHAEL O. LEAVITT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 53rd Legislature of the State of Utah into a Second Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 19th day of May 1999, at 12:00 noon, for the following purpose:

For the Senate to advise and consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 1999 General Session of the 53rd Legislature of the State of Utah.

IN WITNESS WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 4th day of May 1999.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

DEPARTMENT OF HEALTH

PUBLIC NOTICE INPATIENT HOSPITAL REIMBURSEMENT RATES

The Utah Medicaid Agency hereby gives public notice that the Inpatient Hospital Reimbursement rates for the period beginning July 1, 1999, will be, on the average, increased by the factor of 3.9%. This percentage is based on the inflation adjustment reflecting funds appropriated by the Utah State Legislature.

Written comments can be sent to the attention of Blaine Goff. The public may review the proposed changes at: Division of Health Care Financing, Utah State Department of Health, 288 North 1460 West, Salt Lake City, Utah 84116-0580.

DEPARTMENT OF HEALTH

**PUBLIC NOTICE
INSTITUTIONS FOR MENTAL RETARDATION (IMR) REIMBURSEMENT RATES**

The Utah Medicaid Agency hereby gives public notice that the IMR Reimbursement rates for the period beginning July 1, 1999, will be, on the average, increased by the factor of 3.9%. This percentage is based on the inflation adjustment reflecting funds appropriated by the Utah State Legislature.

Written comments can be sent to the attention of Blaine Goff. The public may review the proposed changes at: Division of Health Care Financing, Utah State Department of Health, 288 North 1460 West, Salt Lake City, Utah 84116-0580.

DEPARTMENT OF HEALTH

**PUBLIC NOTICE
NURSING FACILITY REIMBURSEMENT RATES**

The Utah Medicaid Agency hereby gives public notice that the Nursing Facility Reimbursement rates for the period beginning July 1, 1999, are, on the average, increased by the factor of 3.9%. This percentage is based on the inflation adjustment reflecting funds appropriated by the Utah State Legislature.

Written comments can be sent to the attention of Blaine Goff. The public may review the proposed changes at: Division of Health Care Financing, Utah State Department of Health, 288 North 1460 West, Salt Lake City, Utah 84116-0580.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 16, 1999, 12:00 a.m., and April 30, 1999, 11:59 p.m., are included in this, the May 15, 1999, 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 June 14, 1999. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through September 12, 1999, 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.

The Proposed Rules Begin on the Following Page.

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22008

FILED: 04/29/1999, 16:51

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to the Uniform Building Code, International Plumbing Code, and International Mechanical Code that have been approved by the Uniform Building Code Commission are being proposed. It should be noted that there are two additional rule filings affecting R156-56 that are being filed concurrent with this filing.

SUMMARY OF THE RULE OR CHANGE: Added the following definitions to Section R156-56-102: "Construction of a permanent foundation," "Construction of utility services to close proximity of the factory built housing unit," "Permanent foundation," and "Site preparation." Deleted one reference to the Uniform Plumbing Code (UPC) in Section R156-56-302. In Section R156-56-502, corrected numbering sequence. In Section R156-56-704, "Amendments to the UBC," the following changes are being made: added an amendment affecting Chapter 3, Section 305.1 and deleted an amendment to Chapter 3, Section 305.2.3.2 to reconcile Fire Prevention Board and Health Department Rules with UBC amendments for day care; added amendments to Chapter 18, Section 1806 and Section 1806.11 since the current state amendment which has been in effect for about eight years fails to address certain issues such as whether this amendment applies to a home that has had engineering on the superstructure; size of lintels; location of vertical and horizontal steel; corner reinforcing; the relationship to Section 1806.7.1; whether or not special inspection is required; the concrete strength required, etc. All of these issues and more are covered in this revision to the amendment. Because it covers more than just the foundation wall, it was felt that it is more appropriately located in Chapter 18 and with revision to the title, as proposed, it fits logically into place. Implementation of this amendment should result in greater uniformity throughout the state, as it addresses many issues previously left to the discretion of the inspector. Added amendments to Appendix Chapter 30, Sections 3010 and 3012 to adopt the latest version of this safety code as it has been adopted by the Utah Labor Commission, Division of Safety whose inspectors perform all elevator safety inspections in Utah. In Section R156-56-706, "Amendments to the IPC," the following changes were made: rule citation correction was made in amendment affecting Section 403.2; Section 602.3.2 is being deleted in its entirety, it was accidentally not deleted in the amendments made effective

July 1, 1998; added the word "atmospheric" to an amendment affecting Section 608.15.4; added an amendment to Section 608.16.6 regarding connections to lawn irrigation systems to allow the continued use of a double check valve backflow preventer on lawn irrigation systems. This device has historically been an option for low hazard installations. There does not seem to be a compelling reason why the use of this device should not be continued. In Section R156-56-708, "Amendments to the IMC," the following changes were made: added an amendment affecting Chapter 13, Section 1305.1 as many municipalities have received reports of leaking valves which need to be repaired or replaced. Because the current code language requires these valves to be located outside, but within six feet of the appliance, many of the valves are located encased within the brick, tile or rock faces which surround the opening of the fireplace or appliance. The repair or replacement of valves located within this area is a major cost to the occupant while providing no added safety than that gained through compliance with the proposed amendment. Added an amendment to Chapter 13, Section 1309.2 as the majority of listed appliances now available include a shut-off valve as part of the appliance itself. The proposed exception simply gives the authority having jurisdiction an option for those appliances which already have a valve incorporated within, yet still provide the original text for those applications requiring a valve within six feet of the appliance it serves.

(DAR Note: Two additional amendments to R156-56 appear in this *Bulletin*. One is found under DAR No. 22009, and the other is found under DAR No. 22010.)

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

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No cost or savings impact on the state budget since most of the amendments being proposed are incorporating rules that are already in place with other state agencies. Other amendments being proposed will only affect the general public.

❖LOCAL GOVERNMENTS: No cost or savings impact on local governments since most of the amendments being proposed are incorporating rules that are already in place with other state agencies. Other amendments being proposed will only affect the general public.

❖OTHER PERSONS: With regards to the amendment being proposed to Section 1806 of the Uniform Building Code (UBC), there will be no additional cost since the rebar spacing remains the same. In some cases there may be a reduced cost since the amendment as proposed may allow some homes to use this new amendment which may have previously been prohibited. Additionally, it allows for the construction of 9 foot basement walls without requiring engineering. With regards to amendment being proposed to Section 608.16.5 of the International Plumbing Code (IPC), there should be a reduced cost to the general public. The installation of a double check valve backflow preventer is cheaper than a reduced pressure principle backflow preventer. Exact savings is dependent on size of the water service line. Water line service size would range from 1 inch

diameter to 4 inch diameter. With regards to amendments being proposed to Sections 1305.1 and 1309.2 of the International Mechanical Code (IMC), savings will result from the ability to install the required shut off valve in locations other than within walls or enclosed areas where access doors would have to be provided.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs are anticipated for affected persons, only savings are anticipated to the general public as a result of amendments being proposed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed rule amendment is to address a number of areas of the code including to: add definitions, reconcile the Uniform Building Code with rules of other departments; address footing and foundation issues previously left to the discretion of individual inspectors; incorporate the elevator safety code adopted by the Division of Safety which is responsible for inspections; editorial corrections for purposes of clarification; and liberalization of the rules regarding placement of gas shut off valves. It is not anticipated that these amendments will have any impact upon the state budget or upon local governments since they mainly recognize and incorporate rules already in place with other agencies. Also since most of the rules merely mirror rules already enforced by other agencies, there is no anticipated negative fiscal impact upon businesses or the public. A few of the rules, such as placement of gas shut off valves in accessible locations, may result in a reduced cost in construction and might result in lower repair expenses upon homeowners if a valve requires replacement--Douglas C. Borba.

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:

Jud Weiler at the above address, by phone at (801) 530-6731, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.jweiler@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 06/14/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/17/1999, 9:00 a.m., 4112 State Office Building, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: A. Gary Bowen, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rules.
R156-56-102. Definitions.**

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

(1) "Building construction trades" means, for the purpose of these rules only, those areas of construction regulated in the UBC, NEC, IPC, and IMC and requiring inspection by compliance agencies.

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

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

(4) "Construction of a permanent foundation", as used in [Subsection 58-56-3(10)], means a foundation system constructed entirely of placed concrete and is installed around the exterior of the manufactured/mobile home which when completed will be the only source of support and attachment of the home to the ground]the context of factory built housing, means the construction of a basement, or a crawl space of more than four feet six inches in height, for use with a factory built housing unit which is constructed of wood, concrete block, or placed concrete.

(5) "Construction of utility services to close proximity of the factory built housing unit" means construction of gas lines, electrical conduit or wires, sewer lines and water lines from the utility source to and including the meter or meters as required.

([5]6) "Direct supervision" means that the inspector responsible for supervising an inspector-in-training shall be physically present on-site at the time of inspection and the supervising inspector is responsible for any work delegated to the inspector-in-training. The inspector-in-training may not approve or disapprove any work and may not sign any orders, approvals or permits.

([6]7) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

([7]8) "Indirect supervision" means that the inspector responsible for supervising an inspector-in-training may be remote from the site of inspection and the supervisor reviews the results of the inspection with the inspector-in-training and is responsible for any work delegated to the inspector-in-training. The inspector-in-training may issue orders, approvals and permits with the approval of his supervisor and may sign orders, approvals and permits with his supervisor's approval.

([8]9) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical

construction, alteration, remodeling, repair or installation in accordance with the UBC, NEC, IPC and IMC and taking appropriate action based upon the findings made during inspection.

(10) "Permanent foundation", as used in the context of factory built housing, means the main foundation system for the manufactured home including approved steel, wood or concrete block.

(9)11 "Permanently affixed to real property" means a manufactured home or mobile home which has been anchored to, and supported by a permanent foundation, and which has complied with all of the provisions of Section 59-2-602.

(10)12 "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

(11)13 "Set-up" means the installation of a manufactured/mobile or modular home.

(14) "Site preparation", as used in the context of factory built housing, means excavating of the ground in the area where a basement is to be constructed and the back filling and grading around the basement.

(12)15 "Uniform Building Standards" means the UBC, IMC, IPC, and NEC as amended and the HUD Code as amended (See R156-56-701) and NCSBCS.

(13)16 "Unprofessional conduct" as defined in Title 58, Chapter 1 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-56-502.

R156-56-302. Licensure of Inspectors.

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

(1) License Classifications. Each inspector employed by a local regulator, state regulator, compliance agency, or private agency providing inspection services to a regulator or compliance agency, shall qualify for licensure and be licensed by the division in one of the following classifications not later than July 1, 1993:

- (a) Building Inspector I - UBC;
- (b) Electrical Inspector I - NEC;
- (c) Plumbing Inspector I - IPC;
- (d) Mechanical Inspector I - IMC;
- (e) Combination Inspector I - UBC, NEC, IPC, IMC;
- (f) Combination Inspector II - Limited Commercial Combination;
- (g) Combination Inspector III - Dwelling; and
- (h) Building Inspector III - UBC;
- (i) Electrical Inspector III - NEC;
- (j) Plumbing Inspector III - IPC;
- (k) Mechanical Inspector III - IMC; and
- (l) Inspector-in-Training.

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

- (a) Building Inspector I - UBC.

(i) In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling or repair of any building or

structure, or the components of any building or structure for which a standard is provided in the specific edition of the UBC adopted under these rules or amendments to the UBC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling or repair is in compliance or is not in compliance with the adopted UBC.

(iii) After determination of compliance or non-compliance with the adopted building code, take appropriate action as is provided in the UBC.

(b) Electrical Inspector I - NEC.

(i) In accordance with the NEC, inspect all electrical components of any building, structure or work for which a standard is provided in the specific edition of the NEC adopted under these rules or amendments to the NEC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of the electrical components of any building, structure or work is in compliance or is not in compliance with the adopted NEC.

(iii) After determination of compliance or noncompliance with the NEC, take appropriate administrative action as is provided in the UBC.

(c) Plumbing Inspector I - IPC.

(i) In accordance with the IPC, inspect all plumbing components of any building, structure or work for which a standard is provided in the specific edition of the IPC adopted under these rules or amendments to the IPC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of the plumbing components of any building, structure or work is in compliance or is not in compliance with the adopted IPC.

(iii) After determination of compliance or noncompliance with the IPC, take appropriate action as is provided in the IPC.

(d) Mechanical Inspector I - IMC.

(i) In accordance with the IMC, inspect all mechanical components of any building, structure or work for which a standard is provided in the specific edition of the IMC adopted under these rules or amendments to the IMC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of the mechanical component of any building, structure or work is in compliance or is not in compliance with the adopted IMC.

(iii) After determination of compliance or noncompliance with the IMC, take appropriate action as is provided in the IMC.

(e) Combination Inspector I - UBC, NEC, IPC, and IMC.

(i) In accordance with the UBC, NEC, IPC, and IMC, inspect the components of any building, structure or work for which a standard is provided in the specific edition of the aforesaid codes adopted under these rules or amendments to these codes as included in these rules.

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

(iii) After determination of compliance or noncompliance with the UBC, IPC, NEC and IMC, take appropriate action as is provided in the aforesaid codes.

(f) Combination Inspector II - Limited Commercial Combination.

(i) In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling or repair of any residential building not exceeding 15 units and two stories in height which is classified under an "R" occupancy in the UBC; all accessory buildings classified under a "U" occupancy in the UBC; and commercial buildings limited to those not exceeding two stories in height or 6000 square feet for buildings classified under a "A-3" occupancy in the UBC, 8000 square feet for buildings classified under a "B", "F-1", "M", "S-1", "S-3", or "S-5" occupancy in the UBC, and 3000 square feet for buildings classified under a "H-4" occupancy in the UBC.

(ii) In accordance with the NEC, IPC, and IMC inspect the electrical, plumbing and mechanical components of a building defined in the above Subsection (i) of Subsection (f).

(iii) Determine whether the construction, alteration, remodeling or repair is in compliance or is not in compliance with the adopted building codes.

(iv) After determination of compliance with the adopted building codes, take appropriate action as is provided in the UBC, NEC, IPC, or IMC.

(g) Combination Inspector III - Dwelling.

(i) In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling or repair of any single-family or two family residential building classified under an "R-3" occupancy in the UBC, accessory buildings to R-3 dwellings classified under "U-1" or "U-2" occupancy in the UBC, and agricultural buildings classified under an "U-1", "U-2", "UBC Appendix Chapter 3, Division II", or "UBC Appendix Chapter 3, Division IV" occupancy in the UBC.

(ii) In accordance with the NEC, IPC, and IMC inspect the electrical, plumbing and mechanical components of a building defined in the above Subsection (i) of Subsection (g).

(iii) Determine whether the construction, alteration, remodeling or repair is in compliance or is not in compliance with the adopted building codes.

(iv) After determination of compliance with the adopted building codes, take appropriate action as is provided in the UBC, NEC, IPC, or IMC.

(h) Building Inspector III - UBC.

In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling, or repair of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under "U-1" or "U-2" occupancy, and agricultural buildings classified under an "U-1", "U-2", or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(i) Electrical Inspector III - NEC.

In accordance with the NEC, inspect the electrical components of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under an "U-1" or "U-2" occupancy, and agricultural buildings classified under an "U-1", "U-2" or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(j) Plumbing Inspector III - IPC.

In accordance with the IPC, inspect the plumbing components of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under an "U-1" or "U-2" occupancy, and agricultural

buildings classified under an "U-1", "U-2" or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(k) Mechanical Inspector III - IMC.

In accordance with the IMC, inspect the mechanical components of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under an "U-1" or "U-2" occupancy, and agricultural buildings classified under an "U-1", "U-2" or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(l) Inspector-in-Training.

(i) Under the direct supervision of a licensed building inspector, licensed electrical inspector, licensed plumbing inspector or licensed mechanical inspector, for the purpose of training, inspect the construction, alteration, remodeling, repair and/or installation of buildings, electrical components, plumbing components, and/or mechanical components for which a standard is provided in the adopted editions of the UBC, NEC, IPC, or IMC or under amendments to those codes when the regulator, compliance agency, or private agency providing inspection services to a regulator or a compliance agency elects to employ the services of a licensed inspector-in-training. Nothing in this subsection shall be interpreted to require a regulator, compliance agency, or private agency to employ the services of a person licensed in the classification inspector-in-training.

(ii) A licensed inspector-in-training may not take any action authorized under the UBC, NEC, IPC, and/or IMC upon a finding after inspection of compliance or noncompliance other than to inform the licensed inspector responsible for his supervision while under direct supervision. Thereafter the inspector-in-training may perform assigned duties under indirect supervision. Related experience and education approved by the division in collaboration with the committee in accordance with the following hours designated by code and/or classification may be credited towards the direct supervision hours.

(iii) Building Inspector-in-training III required direct supervision hours.

(A) Uniform Building Code: 70 hours, 50 of which can be waived with documented experience and/or education.

(B) National Electrical Code: 70 hours, 50 of which can be waived with documented experience and/or education.

(C) International Plumbing Code: 60 hours, 50 of which can be waived with documented experience and/or education.

(D) International Mechanical Code: 60 hours, 50 of which can be waived with documented experience and/or education.

(iv) Building Inspector-in-training II required direct supervision hours.

(A) Uniform Building Code: 80 hours, 60 of which can be waived with documented experience and/or education.

(B) National Electrical Code: 80 hours, 60 of which can be waived with documented experience and/or education.

(C) International Plumbing Code: 70 hours, 60 of which can be waived with documented experience and/or education.

(D) International Mechanical Code: 70 hours, 60 of which can be waived with documented experience and/or education.

(v) Building Inspector-in-training I required direct supervision hours.

(A) Uniform Building Code: 100 hours, 70 of which can be waived with documented experience and/or education.

(B) National Electrical Code: 100 hours, 70 of which can be waived with documented experience and/or education.

(C) International Plumbing Code: 80 hours, 70 of which can be waived with documented experience and/or education.

(D) International Mechanical Code: 80 hours, 70 of which can be waived with documented experience and/or education.

(vi) The supervising licensed inspector is at all times responsible for the work of the inspector-in-training while that inspector is training and assigned to be under the direction of that supervisor.

(vii) An inspector-in-training license in each single classification may be issued by the division to an individual for a period not to exceed two years.

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

(a) Building Inspector I - UBC.

Has passed the examination for and maintained as current the "Building Inspector Certification" issued by the International Conference of Building Officials, or has passed a Building Inspector I examination if such is developed at the direction of the division in collaboration with the commission.

(b) Electrical Inspector I - NEC.

Has passed the examination for and obtained the "Electrical Inspector Certification" issued by the International Conference of Building Officials or a "General Electrical Inspectors Certification" issued by the International Association of Electrical Inspectors, or has passed an Electrical Inspector examination if such is developed at the direction of the division in collaboration with the commission.

(c) Plumbing Inspector I - IPC.

Has passed the examination for and obtained the "Commercial Plumbing Inspector Certification" issued by the International Association of Plumbing and Mechanical Officials, the "Plumbing Inspector Certification" issued by the International Conference of Building Officials, or has passed a Plumbing Inspector examination if such is developed at the direction of the division in collaboration with the commission.

(d) Mechanical Inspector I - IMC.

Has passed the examination for and obtained the "Commercial Mechanical Inspector Certification" issued by the International Code Council or International Association of Plumbing and Mechanical Officials, the "Mechanical Inspectors Certification" issued by the International Conference of Building Officials, or has passed a Mechanical Inspector examination if such is developed at the direction of the division in collaboration with the commission.

(e) Combination Inspector I - UBC, NEC, IPC, IMC.

Has passed the examination for and maintained as current the following national certifications:

(i) the "Building Inspector Certification" issued by the International Conference of Building Officials;

(ii) the "Electrical Inspector Certification" issued by the International Conference of Building Officials or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Conference of Building Officials, International Code Council or the International Association of Plumbing and Mechanical Officials or the "Commercial Plumbing Inspector Certification" issued by the International Code Council or

International Association of Plumbing and Mechanical Officials; and

(iv) the "Mechanical Inspector Certification" issued by the International Conference of Building Officials or the "Commercial Mechanical Inspector Certification" issued by the International Association of Plumbing and Mechanical Officials.

(f) Combination Inspector II - Limited Commercial Combination.

(i) Has passed the examination for and maintained as current:

(A) the "Combination Dwelling Inspector Certification" issued by the International Conference of Building Officials; or

(B) the "Combination Inspector III State Certification" as developed at the direction of the division in collaboration with the commission; and

(C) the "Limited Commercial Combination Certification" issued by the International Conference of Building Officials.

(ii) After July 1, 1993 those newly qualifying for licensure by passing and maintaining ICBO Combination Dwelling Certification must also pass and maintain the ICBO Light Commercial Combination Certification.

(g) Combination Inspector III - Dwelling.

(i) Has passed the examination for and maintained as current the "Building Inspector III Certification" as prepared and administered under the direction of the division in collaboration with the commission or has passed the examination for and maintained as current the "Combination Dwelling Inspector Certification" issued by the International Conference of Building Officials.

(A) Proof of passing and maintaining as current a board approved national certification exam in plumbing, electrical, mechanical or building inspection exempts the applicant from having to take and pass that portion of the state exam.

(h) Building Inspector III - UBC.

Has passed the examination for and maintained as current the "Building Inspector III - Residential Building Inspector Certification" as prepared and administered under the direction of the division.

(i) Electrical Inspector III - NEC.

Has passed the examination for and maintained as current the "Electrical Inspector III - Residential Electrical Inspector Certification" as prepared and administered under the direction of the division.

(j) Plumbing Inspector III - IPC.

Has passed the examination for and maintained as current the "Plumbing Inspector III - Residential Plumbing Inspector Certification" as prepared and administered under the direction of the division.

(k) Mechanical Inspector III - IMC.

Has passed the examination for and maintained as current the "Mechanical Inspector III - Residential Mechanical Inspector Certification" as prepared and administered under the direction of the division.

(l) Inspector-in-training.

Show the applicant has graduated from high school or has obtained an equivalent certification.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the division; and

(ii) pay a fee determined by the department pursuant to Section 63-38-3.2.

R156-56-502. Unprofessional Conduct.

~~[(5) Unprofessional Conduct.~~

] "Unprofessional conduct" includes:

(~~[a]~~1) knowingly failing to inspect or issue correction notices for code violations which when left uncorrected would constitute a hazard to the public health and safety and knowingly failing to require that correction notices are complied with;

(~~[b]~~2) the use of alcohol or the illegal use of drugs while performing duties as a building inspector or at any time to the extent that the inspector is physically or mentally impaired and unable to effectively perform his duties as an inspector;

(~~[c]~~3) gross negligence in the performance of official duties as an inspector;

(~~[d]~~4) failure to supervise an inspector-in-training for which an inspector assumes responsibility in accordance with these rules or in a manner to ensure the public health, safety and welfare;

(~~[e]~~5) the personal use of information or knowingly revealing information to unauthorized persons when that information has been obtained by the inspector as a result of their employment, work, or position as an inspector;

(~~[f]~~6) unlawful acts or acts which are clearly unethical under generally recognized standards of conduct of an inspector;

(~~[g]~~7) engaging in fraud or knowingly misrepresenting a fact relating to the performance of duties and responsibilities as an inspector;

(~~[h]~~8) knowingly failing to require that all plans, specifications, drawings, documents and reports be stamped by architects, professional engineers or both as established by law;

(~~[i]~~9) knowingly failing to report to the Division any act or omission of a licensee under Title 58, Chapter 55, which when left uncorrected constitutes a hazard to the public health and safety;

(~~[j]~~10) knowingly failing to report to the Division unlicensed practice by persons performing services who are required by law to be licensed under Title 58, Chapter 55; and

(~~[k]~~11) approval of work which materially varies from approved documents that have been stamped by an architect, professional engineer or both unless authorized by the licensed architect, professional engineer or both.

R156-56-704. Amendments to the UBC.

(1) Statewide Amendments

Chapter 1, Section 101.3 is amended by adding the following paragraph:

"The appendix chapters of this code are approved for adoption in each political subdivision of the State provided that each said political subdivision shall furnish to the Division a list of adopted chapters of the appendix to be kept on file. Where this code is not adopted by any political subdivision, the use of the appendix chapters shall be as determined by the Division with the concurrence of the Commission".

Chapter 1, Section 104.1 is amended as follows:

"There is hereby established in each political subdivision of the state a code enforcement agency which shall be under the administrative and operational control of the building official. The building official shall be appointed by the local regulator. If the local regulator fails to appoint a building official, the Director of the

Division of Occupational and Professional Licensing with the Commission shall appoint one".

Chapter 1, Section 109.1 is amended by replacing the exception with the following:

EXCEPTION: Group R, Division 3 and Group U Occupancies; provided local jurisdictions may require a certificate of occupancy for Group R, Division 3 occupancies.

Chapter 3, Section 305.1 is amended as follows:

The following exception is added at the end of the section:

EXCEPTION: Areas used for day care purposes may be located in a Group R, Division 3 occupancy provided the building substantially complies with the requirements for a dwelling unit and under all of the following conditions:

1. Compliance with the Utah Fire Prevention Board Rules (R710-8) for Family Day Care;

2. Use is approved by the State Department of Health as a Residential Certificate Child Care (R430-50) or licensed as a Family Child Care (R430-90); and

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

Chapter 3, Section 305.2.3 is amended as follows:

The following section is added after the title of Section 305.2.3 Special Provisions:

305.2.3.1 Kindergarten, first- or second-grade pupils.

Delete in its entirety the last paragraph of Section 305.2.3 which reads "Stages and platforms shall be construed in accordance with Chapter 4. For attic space partitions and draft stops, see Section 708".

~~Chapter 3, Section 305.2.3.2 is added as follows:~~

~~305.2.3.2 Day Care for 7 to 12 persons. Areas used for day care purposes of not less than seven persons and not more than 12 persons may be located in a dwelling unit, provided the building substantially complies with the requirements for a Group R, Division 3 occupancy. The increased requirements in Chapter 10 for occupant loads of 10 or more shall not apply. In addition, dwellings used for day care shall be provided with the following:~~

~~1. Areas used for group day care shall have two separate means of egress arranged so that if one is blocked, the other will be available:~~

~~a. Exit doors, other than the main exit, may be 32 inches wide.~~

~~b. When area is located in the basement or on the second floor, one of the exits must discharge directly to the outside.~~

~~c. Any interior stairway used as an exit from a basement shall be enclosed by a smoke and draft barrier which includes a self-closing, 20 minute fire-rated door assembly.~~

~~2. Group day care uses located in dwelling units shall not be located above the second floor.~~

~~3. Rooms used for sleeping shall have at least one window or door approved for emergency escape per Section 310.4.~~

~~4. Closet door latches shall be such that children can open the door from the inside of the closet.~~

~~5. Bathroom door locks shall be readily openable by staff from the outside.~~

~~6. Smoke detectors shall be installed in accordance with Section 310.9.1, including existing dwelling units.]~~

Chapter 3, Section 305.2.3.3 is added as follows:

305.2.3.3 Other. Stages and platforms shall be constructed in accordance with Chapter 4. For attic space partitions and draft stops, see Section 708.

Chapter 10, Section 1004.3.4.3.2.1, Doors is amended by renumbering the existing exception as No. 1 and adding Exception 2. as follows:

2. In Group E-1 and E-2 occupancies that are fully protected by an approved fire sprinkler system, the door closers may be of the friction hold open type on classrooms only. In non-sprinkled E-1 and E-2 occupancies, classroom doors shall be held open only by a magnetic hold open device.

Chapter 10, Section 1003.3.3.6 is amended by adding an exception to the third paragraph as follows:

Exception: Handrails serving an individual unit in a Group R, Division 1 or Division 3 Occupancy may have either a circular cross section with a diameter of 1 1/4 inches (32 mm) to 2 inches (51 mm), or a non-circular cross section with a perimeter dimension of at least 4 inches (102 mm) but not more than 6 5/8 inches (168 mm) and a largest cross sectional dimension not exceeding 3 1/4 inches (83 mm). The perimeter on non-circular cross sections shall be measured from one side of the cross section, 2 inches (51 mm) down from the top or crown.

An indentation is required on both sides of non-circular handrail cross sections. This indentation must be in the area of the sides between 5/8 inch (16 mm) and 1 1/2 inches (38 mm) down from the top or crown of the cross section. The indentation shall be a minimum of 1/4 inch (6 mm) deep on each side and shall be at least 1/2 inch (13 mm) high.

Edges within the handgrip shall have a minimum radius of 1/16 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

Chapter 11, Section 1103.1.9.3 is amended as follows:

The following is added as Exception 6.:

6. When a change of use in the building or portion of the building results in multi-unit dwellings as defined in this section, only 20% of the dwelling units need to be Type B dwelling units. These dwelling units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling units, shall be Type A dwelling units.

Chapter 16, Section 1612.3.2, Exception 2 is amended to read as follows:

2. Snow loads over 30 psf may be reduced in accordance with Section 1630.1.1, Item 3 (amended), and snow loads 30 psf or less need not be combined with seismic.

Chapter 16, Section 1630.1.1, Item 3 is amended as follows:

3. Design snow loads of 30 psf or less need not be included. Where the snow load exceeds 30 psf, the snow load shall be included. The snow load shall be adjusted in accordance with the following formula: $W_s = (0.25 + 0.025(A-5))P_f$

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

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

P_f = Design roof snow load, psf.

Chapter 18, Section 1806 is amended by revising the section heading as follows:

Section 1806 Footings and Foundations.

Chapter 18, Section 1806.6.1 is amended by adding the following exception at the end of that section:

Exception: When anchor bolt spacing does not exceed 32 inches on center.

Chapter 18, Section 1806.11 is added as follows:

1806.11 Empirical foundation design. Group R, Division 3 occupancies three stories or less in height, and Group U occupancies, which are constructed in accordance with Section 2320, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, may have foundations constructed in accordance with Table 18-I-D.

TABLE 18-1-D
Empirical Foundation Walls (1,8)

Max. Height	2'	4'	6'	8'	9'	Over 9'
Top Edge Support	None	None	Floor or roof dia-phragm	Same as floor	Same as floor	Engineering required
Minimum Thickness	6"	6"	8"	8"	8"	Same as above
Vertical Steel(2)	Note (5)	#4 @ 24"	#4 @ 24"	#4 @ 24"	#4 @ 16"	Same as above
Horizontal Steel(3)	2-#4 Bars	3-#4 Bars	4-#4 Bars	5-#4 Bars	6-#4 Bars	Same as above
Steel at Openings(4)	2-#4 Bars	2-#4 Bars	2-#4 Bars	2-#4 Bars	2-#4 Bars	Same as above
	above;	above;	above;	above;	above;	
	1-#4 Bar each side	1-#4 Bar each side	1-#4 Bar each side	1-#4 Bar each side	1-#4 Bar each side	
Max. Lintel Length	2'	3'	6'	6'	6'	Same as above
Min. Lintel Depth	2" for each ft. of opening width; Min. 6"	Same as 2'	Same as 2'	Same as 2'	Same as 2'	Same as above

Max. Grade Differential	1'6" (6)	3'6" (6)	5" (7)	5" (7)	5" (7)	Same as above
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Notes:

(1) Based on 3000 psi concrete and grade 60 reinforcing steel - special inspection is not required.

(2) To be placed in the center of the wall, and extend from the footing to within three inches of the top of the wall; Dowels of #4 rebar with standard hook shall be provided in the footing to match the vertical steel, with the vertical leg extending 24 inches into the foundation wall.

(3) One bar shall be located in the top four inches, one bar in the bottom four inches and the other bars equally spaced between. Such bar placement satisfies the requirements of Section 1806.7.1. Corner reinforcing shall be provided so as to lap 24 inches.

(4) Bars shall be placed within two inches of the openings and extend 24 inches beyond the edge of the opening; vertical bars may terminate three inches from the top of the concrete.

(5) Dowels of #4 rebar at 24 inches on center with a standard hook, shall be provided in the footing, with the vertical leg extending to within three inches of the top of the foundation wall.

(6) Difference in grade from one side of the wall to the other.

(7) Difference in grade from the highest grade to the lowest grade on the perimeter of the foundation.

(8) The footing shall have a minimum width of 20 inches and a minimum thickness of nine inches.

Chapter 23, Section 2316.2, Item 6 is amended by adding footnote 3, reference from "two months", to read as follows:

(6) When the accumulated duration of the full maximum load during the life of the member does not exceed the period indicated below, the values may be increased in the tables as follows:

3 as for snow below 5000 feet elevation.

Chapter 23, Section 2307 is amended by adding exception 5 as follows:

5. Veneer of brick or stone applied as specified in Section 1403.6 may be supported on structural glued-laminated timber or laminated veneer lumber provided that the beam be designed to limit the dead load deflection to 1/800 of the span and the total load deflection to 1/600 of the span with due consideration given for shrinkage and creep. The beam shall be protected from exposure to weather as required for dwelling under Section 1402.1.

Chapter 34, Section 3403.2 is amended as follows:

The following is added after the exceptions:

Buildings constructed prior to 1975 with parapet walls, cornices, spires, towers, tanks, signs, statuary and other appendages shall have such appendages evaluated by a licensed engineer to determine resistance to design loads specified in this code when said building is undergoing reroofing, or alteration of or repair to said feature.

EXCEPTION: Group R-3 and U occupancies.

Original plans and/or structural calculations may be utilized to demonstrate that the parapets or appendages are structurally adequate. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce or remove the deficient feature.

The maximum height of an unreinforced masonry parapet above the level of diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Zones Nos. 3 and 4. If the required parapet height exceeds this maximum height, a bracing system designed for the forces specified in Table 16-0 for walls shall support the top of the parapet. When positive diaphragm connections are absent, tension roof anchors are required. Approved alternate methods of equivalent strength will be considered when accompanied by engineer sealed drawings, details and calculations.

Appendix Chapter 3, Division IV, Requirements for Group R, Division 4 Occupancies, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 11, Division I, Site Accessibility, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 11, Division II, Accessibility For Existing Buildings, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 13, Energy Conservation in New Building Construction, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 13, Section 1302.2 is amended as follows:

In order to comply with the purpose of this appendix, low-rise residential buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the International Conference of Building Code Officials (ICBO); the Southern Building Code Congress International, Inc. (SBCCI); the Building Officials and Code Administrators International, Inc. (BOCA); and the National Conference of States on Building Codes and Standards, dated 1995. Commercial and high-rise residential buildings shall be designed to comply with the requirements of the Energy Code for Commercial and High-Rise Residential Building, which is a codification of ASHRAE/IES Standard 90.1 - 1989, Energy Efficient Design of New Buildings except Low-Rise Residential Buildings.

The Model Energy Code is amended as follows:

Section 502.2.1 Walls is amended as follows:

Equation 1 shall be used to determine acceptable combinations to meet this requirement, and when metal studs are used, U_w -values shall be those calculated using appropriate correction factors for thermal bridging of insulation as published in Section 8 of RS-1; or calculated using ASHRAE RS-4 approved methodology for either serial or parallel path thermal transfer; or U -values compiled in Table 8-Y of the "User's Manual" for ASHRAE/IES Standard 90.1-1989, which is hereby incorporated by reference and which shall be available at all offices issuing building permits or the Division of Occupational and Professional Licensing or insertion in the Model Energy Code.

Simplified prescriptive maps, tables or other compliance aids, manuals or computer programs as may be supplied by DOE/Pacific Northwest Laboratory or others, when certified by the state or its agencies, may be used to demonstrate energy code compliance.

ASHRAE/IES Standard 90.1-1989 is amended as follows:

Section 101.3.1.2 Exceptions:

(4) The building official may approve designs which do not fully conform with all of the requirements of this code where in the opinion of the building official full compliance is physically impossible and/or economically impractical.

Appendix Chapter 16, Division I, Snow Load Design is adopted and incorporated by reference.

Appendix Chapter 16, Division I, Section 1639 is amended as follows:

The ground snow load, P_g , to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A - A_o)^2)^{1/2}$ for A greater than A_o and $P_g = P_o$ for A less than A_o .

WHERE:

P_g = Ground snow load at a given elevation (psf)

P_o = Base ground snow load (psf) from Table A-16-C

S = Change in ground snow load with elevation (psf/1000 ft), from Table A-16-C

A = Elevation above sea level at the location for which snow load is being determined (ft/1000)

A_o = Asymptote and zero ground snow axis intercept (ft/1000) from Table A-16-C

The ground snow load, P_g , may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record. The building official may round the snow load to the nearest 5 psf.

TABLE NO. A-16-C
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P _o	S	A _o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

Appendix Chapter 29, Minimum Plumbing Facilities, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 29 is amended as follows:

The following is added as footnote 7:

7. When provided, there shall be an equal number of diaper changing facilities for men as for women.

Appendix Chapter 30, Elevators, Dumbwaiters, Escalators and Moving Walks, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 30, Section 3010 is deleted and replaced with the following:

Section 3010 Definitions. ANSI CODE is the ASME/ANSI A17.1-1996 with Supplements A17.1a-1997, Safety Code for Elevators and Escalators, and American National Standard Published by the American Society of Mechanical Engineers.

Appendix Chapter 30, Section 3012 is deleted and replaced with the following:

Section 3012 ANSI CODE ADOPTED. New elevators, dumbwaiters, escalators and moving walks and major alterations to such conveyances and the installation thereof shall conform to the requirements of the American National Standards Institute ASME/ANSI A17.1-1996 Safety Code for Elevators and Escalators, including Supplements A17.1a-1997, published by the American Society of Mechanical Engineers. Elevators and escalators that are remodeled or upgraded shall conform with ASME/ANSI A17.3-1996, Safety Code for Existing Elevators and Escalators, published by the American Society of Mechanical Engineers.

Appendix Chapter 30, Section 3012 is amended as follows:

The following is added at the end of Section 3012:

Exceptions to ANSI/ASME A17.1:

- (1) Delete Rule 102.2(c)(3); and

(2) Rule 102.2(c)(4) shall apply to all elevators except hydraulic elevators with 50 feet of travel or less.

Chapter 9-1 of the UBC Standards is amended as follows:

Replace the current Uniform Building Code Standard 9-1 (NFPA-13, 1991 edition) with the fire sprinkler standard, NFPA-13, 1996 edition.

Chapter 9-3 of the UBC Standards is amended as follows:

Replace the current Uniform Building Code Standard 9-3 (NFPA-13R, 1989 edition) with the fire sprinkler standard, NFPA-13R, 1996 edition.

(2) Local Amendments

Beaver County

Beaver County adopted Appendix Chapter 3, Division II.

Heber City Corporation

Heber City Corporation adopted Appendix Chapter 33.

Murray City Corporation adopted Appendix Chapter 3 Division II, Appendix Chapter 31 Division III, and Appendix Chapter 33.

City of North Salt Lake

City of North Salt Lake adopted Appendix Chapter 3, except Section 332, Appendix Chapter 9, Appendix Chapter 12, Division I, Appendix Chapter 15, Appendix Chapter 31, Division II and III and Appendix Chapter 33.

City of Orem

City of Orem adopted Appendix Chapter 3, Division I, Appendix Chapter 3, Division II, Appendix Chapter 31, Division III, and Appendix Chapter 33.

Park City Corporation

Chapter 9, Section 904.2.1 is amended by adding the following sections:

904.2.1.1 All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

904.2.1.2 All new construction having more than two (2) stories, except R-3 occupancy.

904.2.1.3 All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

904.2.1.4 All new construction in the Historic Commercial Business zone district, regardless of occupancy.

904.2.1.5 All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

904.2.1.6 All existing building within the Historic District Commercial Business zone by August 15, 1996.

Park City Corporation

Chapter 15, Table No. 15-A. The following is added as footnote 5:

5 Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Park City Corporation

Chapter 33, Section 3306.2 is amended as follows:

Omit paragraph 1 and add a period after the word "excavation" in the third line of paragraph 2 and omit "nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure". Delete paragraphs 8 and 9. Re-number the sections and add a new paragraph 7 requiring a permit for removal of substantial vegetation, shrubs, trees and stabilizing grass, but not to include weeds.

Park City Corporation adopted Appendix Chapter 3 Division II, Chapter 4 Division II, Chapter 12 Division II, Chapter 13, Chapter 15, Chapter 30, Chapter 31 Division I and Chapter 33.

Salt Lake County

Salt Lake County adopted Chapter 15, Chapter 16, Division III, Chapter 31, Division II, Chapter 31, Division III and Chapter 33.

City of St. George

City of St. George adopted Appendix Chapter 3 and Appendix Chapter 33.

Sandy City

Chapter 9, Section 904.2 is amended as follows:

An automatic fire sprinkler system shall be installed in all occupancies where the required fire flow exceeds 2,000 gallons per minute based on Table A-III-A-1 of the 1994 Uniform Fire Code.

Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R, Division 3 and Group U occupancies.

Summit County

Summit County adopted Appendix Chapter 33.

Summit County

Chapter 9, Section 904.2

1. All new construction having more than 6,000 square feet on any one floor, except R-3 and U occupancies.

2. All new construction having more than two (2) stories, except R-3 and U occupancies.

3. All new construction having three (3) or more dwelling units, including units rented or leased and including condominiums or other separate ownership.

4. All newly constructed structures used as dwelling units in a multi-unit structure shall have at least an one hour fire resistive separation between units.

Washington City

Washington City adopted Appendix Chapter 33.

City of West Jordan

City of West Jordan adopted Appendix Chapter 3, Division II, Appendix Chapter 4, Division II, Appendix Chapter 13 and Appendix Chapter 33.

R156-56-706. Amendments to the IPC.

(1) Statewide Amendments

Section 103.1 is deleted in its entirety.

Section 103.2 is deleted in its entirety.

Section 103.3 is deleted in its entirety.

Section 103.4 is deleted in its entirety.

Section 103.5 is renumbered as Section 103.1.

Section 107.1.1 is deleted in its entirety.

Section 109 is retitled as "Board of Appeal".

Section 109.1 is deleted and replaced with the following:

109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be and is hereby created a local board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to building construction and who are not employees of the jurisdiction. The code official shall be an ex officio member of and shall act as secretary to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and finding in writing to the appellant with a duplicate copy to the code official.

Sections 109.2 through 109.7 are deleted in their entirety.

Section 202 General Definitions is revised as follows:

The definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

The definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

The following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

The definition for "Code Official" is deleted and replaced with the following:

Code Official. The individual official, board, department or agency established and authorized by a state, county, city or other political subdivision created by law to administer and enforce the provisions of the plumbing code as adopted or amended. This definition shall include the code official's duly authorized representative.

The definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

The following definition is added:

Emergency Floor Drain. A floor drain installed for the primary purpose of collecting water from emergency spills or water line breaks.

The following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

The definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

The definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

Section 312.9 is deleted in its entirety.

Section 403.1 is deleted and replaced with the following:

403.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Appendix Chapter 29, Uniform Building Code.

Table 403.1 is deleted in its entirety.

Section 403.2 is deleted and replaced with the following:

403.2 Hand sink location. Hand sinks in commercial food establishments shall be located accessible to food preparation areas, food service areas, dishwashing areas, and toilet rooms in accordance with Rule R392-100[-5], Utah Administrative Code. Hand sinks in child care facilities shall be installed in accordance with R430-[-5(19)(5) a and b]100-21, Utah Administrative Code.

Sections 403.4, 403.5 and 403.6 are deleted in their entirety.

Section 409.1 is deleted and replaced with the following:

409.1 Approval. Domestic dishwashing machines shall conform to ASSE (American Society of Sanitary Engineering) 1006. Commercial dishwashing machines shall conform to ASSE 1004, NSF (National Sanitary Foundation) 3 or NSF 26.

Section 409.3 is deleted and replaced with the following:

Section 409.3 Waste connection. Domestic pump-type dishwashers may be directly connected to the inlet side (top or head) of an approved food waste disposal unit or a branch tailpiece in the tailpiece of the sink, by the drain hose being extended and secured as high as possible under the bottom of the counter top before it is connected to the branch tailpiece located above the trap or to an approved food waste disposal unit.

Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one floor drain with a wall mounted hose bibb, or at least one emergency floor drain.

Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1, ASME A112.19.2, ASME A112.19.3, ASME A112.19.4, ASME A112.19.9, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

Section 425.1.1 - The following exception is added after the paragraph.

Exception: Multiple urinals with an automatic flushing device.

Section 502.6 is added as follows:

502.6 Water Heater Seismic Bracing. In seismic zones 3 and 4, water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

Section 504.8.1 is amended as follows:

The measurement of "1 inch" in the last sentence of the paragraph is replaced with the measurement "1 1/2 inch".

Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

Sections 602.3.1, ~~602.3.2~~, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

Section 606.2 is deleted and replaced with the following:

606.2 Location of shutoff valves. Shutoff valves shall be installed in the following locations:

1. On the fixture supply to each plumbing fixture.

Exception: 1) bath tubs and showers.

Exception: 2) in individual guest rooms that are provided with unit shutoff valves in hotels, motels, boarding houses and similar occupancies.

2. On the water supply pipe to each sillcock.

3. On the water supply pipe to each appliance or mechanical equipment.

Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

Section 608.1 - The following sentence is added at the end of the paragraph: Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

Table 608.1 is deleted and replaced with the following:

TABLE General Methods of Protection			
Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table 608.15.1

<p>Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)</p>	<p>High or Low</p>	<p>Backpressure or Backsiphonage 1/2" - 16"</p>	<p>a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.</p>	<p>Atmospheric High or Vacuum Low Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1)</p>	<p>Backsiphonage</p>	<p>b. Shall be installed a minimum of 6 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.</p>
<p>Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)</p>	<p>Low</p>	<p>Backpressure or Backsiphonage 1/2" - 16"</p>	<p>a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.</p>	<p>General Installation Criteria</p>	<p>Backsiphonage</p>	<p>a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves. e. The AVB shall be installed in a vertical position only.</p>
<p>Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)</p>	<p>High or Low</p>	<p>Backsiphonage 1/2" - 2"</p>	<p>a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.</p>	<p>General Installation Criteria</p>	<p>Backsiphonage</p>	<p>The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance.</p>
<p>Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)</p>	<p>High or Low</p>	<p>Backsiphonage 1/4" - 2"</p>	<p>a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.</p>	<p>General Installation Criteria</p>	<p>Backsiphonage</p>	<p></p>

In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.

Assemblies shall be maintained as an intact assembly.

Table 608.1.2 is added as follows:

TABLE 608.1.2
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1032
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

Section 608.3.1 - The following sentence is added at the end of the paragraph: All piping and hoses shall be installed below the atmospheric vacuum breaker.

Section 608.7 is deleted in its entirety.

Section 608.8 - The following sentence is added at the end of the paragraph: In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

Section 608.11 - The following sentence is added at the end of the paragraph: The coating shall conform to NSF Standard 61 and

application of the coating shall comply with the manufacturers instructions.

Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

Section 608.13.4 is deleted in its entirety.

Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

Section 608.15.4.2 - The following is added at the end of the paragraph: In climates where freezing temperatures occur, a listed, self-draining frost proof hose bibb with an integral backflow preventer shall be used.

Section 608.16.1 is deleted and replaced with the following:

608.16.1 Beverage dispensers. Potable water supply to carbonators shall be protected by a stainless steel vented dual check valve installed according to the requirements of this chapter.

Section 608.16.2 - The first sentence of the paragraph is deleted and replaced as follows:

608.16.2 The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the two walls. Heat exchangers shall be permitted to be of single wall construction under one of the following conditions:

1. a. Utilize a heat transfer medium of potable water or only substances which are recognized as safe by the United States Food and Drug Administration (FDA); and

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

Exception: Steam complying with paragraph 1 above; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Approved listed electrical drinking water coolers.

Section 608.16.6 is deleted and replaced with the following:

608.16.6 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double check valve backflow preventer or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

Section 608.16.10 is added as follows:

608.16.10 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

Section 608.17 is deleted in its entirety.

Section 608.18 is added as follows:

608.18 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and the Reduced Pressure Detector Assembly.

Section 612 is added as follows:

612. Gray Water

Gray Water Recycling Systems, Appendix C of the IPC, cannot be adopted by any jurisdiction until January 1, 2000.

Section 701.2 - The following is added at the end of the paragraph: The sewer is considered as available when within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended. Private sewage disposal systems shall conform with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

Section 802.1.1 is deleted and replaced with the following:

802.1.1 Food handling. Equipment and fixtures utilized for the storage, preparation and handling of food or food equipment shall discharge through an indirect waste pipe by means of an air gap.

Exception: This requirement shall not apply to dishwashing machines and dishwashing sinks. This requires commercial dishwashing machines and dishwashing sinks to discharge through an air gap or an air break.

Section 802.3 is amended as follows:

The term "waste receptors" in the last sentence of the paragraph is replaced with the term "floor sinks".

Section 802.3.2 is deleted in its entirety.

Section 904.6 - The following sentence is added at the end of the paragraph: Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

Section 917.2 is deleted and replaced with the following:

917.2 Installation. The valves may be installed in accordance with the requirements of this section and the manufacturers installation instructions when approved by the code official. Air admittance valves shall be installed after the DWV testing required by Section 312.2 or 312.3 has been performed.

Section 1002.4.1 is added as follows:

1002.4.1 Emergency floor drains. Each emergency floor drain shall be installed with a trap seal primer. Trap seal primer shall conform to ASSE 1018 or ASSE 1044.

Section 1003.3.3 is added as follows:

1003.3.3 Grease trap restriction. Unless specifically required or permitted by the code official, no food waste grinder or dishwasher shall be connected to or discharge into any grease trap.

Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm with sanitary drainage. The sanitary and storm drainage systems of a structure shall be entirely separate.

Section 1108 is deleted in its entirety.

Section 1201.2 is deleted and replaced with the following:

1201.2 Fuel piping systems. All fuel piping systems shall be sized, installed, tested and placed in operation in accordance with the requirements of the 1998 International Mechanical Code.

Appendix G, Section G110 is deleted, renumbered and replaced with the following:

Section 1202 CNG GAS-DISPENSING SYSTEMS

1202.1 Dispenser protection. The gas dispenser shall have an emergency switch to shut off the power to the dispenser. An approved backflow device that prevents the reverse flow of gas shall be installed on the gas supply pipe or in the gas dispenser.

1202.2 Ventilation. Gas-dispensing systems installed inside the structure shall be ventilated by mechanical means in accordance with the 1998 International Mechanical Code.

1202.3 Compressed natural gas vehicular fuel systems. Compressed natural gas (CNG) fuel-dispensing systems for CNG-fueled vehicles shall be designed and installed in accordance with NFPS 52 and the uniform fire code.

Chapter 14, Referenced Standards, is amended as follows:

NSF - Standard Reference Number 61-95 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE

USC- Foundation for Cross-Connection Control Table 608.1
 FCCCHR Control and Hydraulic Research
 9th University of Southern California
 Edition Kaprielian Hall 300
 Manual Los Angeles CA 90089-2531
 of Cross
 Connection

R156-56-708. Amendments to the IMC.

(1) Statewide Amendments

Chapter 1, Section 103 is deleted in its entirety.

Chapter 1, Section 109 is deleted in its entirety and replaced with the following:

Section 109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to mechanical systems and who are not employees of the jurisdiction. The building official shall be an ex officio member of and shall act as secretary to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

Section 109.2 Limitations of authority. The board of appeals shall have no authority relative to interpretation of the administrative provision of this code nor shall the board be empowered to waive requirements of this code.

Chapter 3, Section 304.8 is amended by adding the following exception at the end of the paragraph:

Exception: R-3 occupancy.

Chapter 3, Section 306.5 is amended by adding the following exception at the end of the paragraph:

Exception: R-3 occupancy.

Chapter 3, Section 306.6 is amended by adding the following exception at the end of the paragraph:

Exception: Evaporative coolers serving R-3 occupancy.

Chapter 4 is deleted in its entirety. In place of the IMC, Chapter 4, reference the 1997 Uniform Building Code, Chapter 12.

Chapter 6, Section 603.8.1 is added as follows:

Section 603.8.1 Residential round ducts. Crimp joints for residential round ducts shall have a contact lap of at least 1 1/2 inches (38 mm) and shall be mechanically fastened by means of at least three sheet metal screws equally spaced around the joint, or an equivalent fastening method.

Chapter 13, Section 1305.1 is amended as follows:

The following exception is added at the end of the section:

Exception: When approved by the authority having jurisdiction, shut-off valves for listed, vented decorative appliances may be accessibly located in an area remote from the appliance. Such valve shall be permanently identified and shall serve no other equipment.

Chapter 13, Section 1309.2 is amended as follows:

The following exception is added at the end of the section:

Exception: When approved by the authority having jurisdiction, shut-off valves for listed, vented decorative appliances may be accessibly located in an area remote from the appliance.

Such valve shall be permanently identified and shall serve no other equipment.

KEY: contractors, building codes, building inspection, licensing
[January 1,]1999

Notice of Continuation June 3, 1997

58-1-106(1)
 58-1-202(1)
 58-56-1
 58-56-4(2)
 58-56-6(2)(a)



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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22009

FILED: 04/29/1999, 16:51

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to the specific editions of the Uniform Building Standards and the National Electrical Code that have been approved by the Uniform Building Code Commission are being proposed. It should be noted that there are two additional rule filings affecting R156-56 that are being filed concurrent with this filing.

SUMMARY OF THE RULE OR CHANGE: In Section R156-56-701, "Specific Editions of Uniform Building Standards," updated the National Electrical Code to the 1999 edition. In Section R156-56-705, "Amendments to the NEC," the following changes were made: Added an amendment affecting Section 205-104(b). This section was separated from the requirements for "Other Metal Piping" in Section 250-104(c). This new subsection (b) is extracted text from the National Fuel Gas Code, National Fire Protection Association (NFPA) 54-1996, Paragraph 3.14(a). The extract was included because the National Fuel Gas Code is more restrictive than the National Electric Code (NEC) with regard to bonding of gas piping. The extracted text requires the bonding of the gas piping without regard to whether it is likely to become energized by connection to any electrical equipment, and requires a bonding connection upstream from the shutoff valve to equipment. When this section was separated from the requirements for "Other Metal Piping" in Section 250-104(c), the code panel included a reference to subsection (c) for sizing the bonding conductor to the gas pipe. However, since the new subsection (b) is extracted text, the extract itself could not be amended under the NFPA rules. Also, because the gas piping is required to be bonded even when (or if) it is not connected to any electrical equipment, there is

no guarantee that an overcurrent device could be identified with which to use Section 250-122 to size the bonding conductor. Therefore, the Technical Correlating Committee removed the reference to 250-104(c) and, indirectly, the reference to 250-122 for sizing the conductor. The result is that no reference to sizing is provided. This proposal intends to restore a reference for sizing the conductor. In the event that no equipment or circuit can be identified that would provide an overcurrent device on which to base the use of Section 250-122, a minimum size is provided. The minimum size of No. 8 solid copper was chosen for three reasons: (1) No. 8 copper is the minimum size grounding electrode conductor; (2) if the gas piping does not connect to any electrical equipment, then the bonding must be for equipotential purposes as no fault current is likely to be imposed. Bonding for equipotential is the objective of both Section 547-9 (for agricultural buildings) and Section 680-22 (for swimming pools) and both require a minimum No. 8 copper conductor. The conductor is also required to be solid for swimming pools; and (3) where the equipment and an overcurrent device can be identified, such as at a furnace in a dwelling unit, the equipment grounding conductor may be as small as No. 14 or No. 12. However, the new rule requires a connection upstream of the shutoff valve. A No. 12 bonding jumper from the furnace to the gas pipe may be sufficient for bonding, but it has little mechanical strength when exposed to damage. The No. 8 solid conductor provides mechanical strength equivalent to that used for similar jumpers around pressure reducing valves and the like. The term "subject to physical damage" is widely used in the NEC and is intended to be subject to interpretation by the authority having jurisdiction. Deleted amendment that affects Section 300-11.

(DAR Note: Two additional amendments to R156-56 appear in this *Bulletin*. One is found under DAR No. 22008, and the other is found under DAR No. 22010.)

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 1999 edition of the National Electrical Code

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The cost of a new 1999 edition of the National Electrical Code book is approximately \$50 for those individuals or agencies that would need the new code.

❖ **LOCAL GOVERNMENTS:** The cost of a new 1999 edition of the National Electrical Code book is approximately \$50 for those individuals or government agencies that would require the new code.

❖ **OTHER PERSONS:** The cost of a new 1999 edition of the National Electrical Code book is approximately \$50 for those individuals or businesses that would need the new code. Regarding the amendment made to Section 250-104(b) of the NEC, this amendment affecting the code may result in a cost increase due to the bonding jumper required from a

piece of equipment to the upstream side of a shutoff valve. However, in any installation subject to the National Fuel Gas Code, there is no change in requirements. Assuming a change in requirements, for a typical dwelling unit, the cost should be about \$10 for a pipe clamp, another clamp or a lug, and a short jumper. Only one jumper, based on the largest overcurrent device protecting any connected equipment will be required in most buildings as any connection ahead of an equipment shutoff valve is usually upstream from all other equipment shutoff valves. However, it should be noted that many jurisdictions have been misapplying the previous rule by requiring bonding jumpers based on Section 250-66 (previously Section 250-94). The proposed amendment could result in decreased costs in those jurisdictions by clarifying the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost of a new 1999 edition of the National Electrical Code book is approximately \$50 for those individuals or businesses that would require the use of the new code book. Regarding the amendment made to Section 250-104(b) of the NEC, there would be a possible expense of \$10 per residential dwelling unit for a pipe clamp and a short jumper.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed rule amendment is to adopt the 1999 edition of the National Electrical Code and to provide a reference for the sizing of conductors to be utilized in connection with bonding jumpers for gas pipe. There should be no fiscal impact on the state budget or upon local governments. There would be a possible expense of \$10 per residential dwelling unit for a pipe clamp and a short jumper. The expense to businesses for the adoption of the 1999 NEC edition would be approximately \$50 for those purchasing the code--Douglas C. Borba.

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:

Jud Weiler at the above address, by phone at (801) 530-6731, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.jweiler@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 06/14/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/17/1999, 9:00 a.m., 4112 State Office Building, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: A. Gary Bowen, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rules.
R156-56-701. Specific Editions of Uniform Building Standards.**

(1) In accordance with Subsection 58-56-4(3), the following Uniform Building Standards are hereby incorporated by reference and adopted as the building standard editions to be applied to construction in the state:

(a) the 1997 edition of the Uniform Building Code (UBC) promulgated by the International Conference of Building Officials (ICBO);

(b) the ~~[1996]~~1999 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association;

(c) the 1997 edition of the International Plumbing Code (IPC) promulgated by the International Code Council;

(d) the 1998 ICC edition of the International Mechanical Code (IMC), as published and promulgated by the International Code Council (ICC);

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

(f) the 1994 edition of NCSBCS A225.1 Manufactured Home Installations promulgated by the National Conference of States on Building Codes and Standards (NCSBCS).

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

(3) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction or NCSBCS/ANSI 225.1, Manufactured Home Installations, provided the design is approved in writing by a professional engineer or architect licensed in Utah. Guidelines for Manufactured Housing Installation as promulgated by the International Conference of Building Officials may be used as a reference guide.

R156-56-705. Amendments to the NEC.

(1) Statewide Amendments

Section 250-104(b) is deleted and replaced with the following:

Section 250-104(b) Metal Gas Piping. Each above ground portion of a gas piping system upstream from the equipment shutoff valve shall be electrically continuous and bonded to the grounding electrode system.

The bonding jumper shall be sized in accordance with Table 250-122 using the rating of the circuit that may energize the piping. The equipment grounding conductor for the circuit that may energize the piping shall be permitted to serve as the bonding means. Where the circuit that may energize the piping cannot be identified or where the bonding jumper is exposed to physical damage, the minimum size bonding jumper shall be No. 8 solid copper.

~~[— Section 300-11. is amended as follows:~~

~~— Section 300-11. is repealed in its entirety and replaced with the following:~~

~~— Section 300-11. Securing and Supporting:~~

~~— (a) Secured in Place. Raceways, cable assemblies, boxes, cabinets, and fittings shall be securely fastened in place. Support~~

~~wires that do not provide secure support shall not be permitted as the sole support:~~

~~— Branch-circuit wiring associated with equipment that is located within, supported by, or secured to a fire-rated floor or roof/ceiling assembly shall not be secured to the ceiling support wires.~~

~~— Branch-circuit wiring associated with equipment that is located within, supported by, or secured to a non-fire-rated floor or roof/ceiling assembly shall be permitted to be supported by the ceiling support wires.~~

~~— Exception: As permitted elsewhere in this Code.~~

~~— (b) Raceways used as means of Support. Raceways shall not be used as a means of support for other raceways, cables, or nonelectric equipment.~~

~~— Exception No. 1: Where the raceways or means of support are identified for the purpose:~~

~~— (FPN): See Article 318 for cable trays.~~

~~— Exception No. 2: Raceways containing power supply conductors for electrically controlled equipment shall be permitted to support Class 2 circuit conductors or cables that are solely for the purpose of connection to the equipment control circuits.~~

~~— Exception No. 3: As permitted in Section 370-23 for boxes or conduit bodies or Section 410-16(f) for fixtures.]~~

(2) Local Amendments[

~~— City of West Jordan~~

~~— City of West Jordan adopted Appendix A:]~~

KEY: contractors, building codes, building inspection, licensing

[January 1, 1999 58-1-106(1)

Notice of Continuation June 3, 1997 58-1-202(1)

58-56-1

58-56-4(2)

58-56-6(2)(a)



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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22010

FILED: 04/29/1999, 16:51

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to the Uniform Building Code and International Plumbing Code that have been approved by the Uniform Building Code Commission are being proposed. It should be noted that there are two additional rule filings affecting R156-56 that are being filed concurrent with this filing.

SUMMARY OF THE RULE OR CHANGE: In Section R156-56-704, "Amendments to the UBC," added an amendment to Chapter 9, Section 904.1.1. In Section R156-56-706, "Amendments to the IPC," added an amendment to Section 608.16.4 regarding connections to automatic fire sprinkler systems and standpipe systems. These two additions are being proposed to provide similar provisions as previous (1991) amendments and to comply with requirements of the Health Department. (**DAR Note:** Two additional amendments to R156-56 appear in this *Bulletin*. One is found under DAR No. 22008, and the other is found under DAR No. 22009.)

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: "Riser Detail", dated July 1, 1999, published by the State and Local Building Codes Amendments, Department of Commerce, Division of Occupational and Professional Licensing

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Amendments being proposed only affect the general public.

❖LOCAL GOVERNMENTS: Amendments being proposed only affect the general public.

❖OTHER PERSONS: As a result of amendments being proposed, there will be a savings realized for businesses and the general public ranging from \$500 (residential) to \$5,000 (commercial) on each installation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Savings to the general public and businesses ranging from \$500 (residential) to \$5,000 (commercial) on each installation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this proposed rule amendment is to protect the potable water of a building from possible contamination due to backflow from automatic fire sprinkler systems. There are no anticipated savings or expenses to the state budget from this rule change and there will be no impact upon local governments. The fiscal impact upon business and the general public will be a savings of from \$500 to \$5,000 per installation using the adopted backflow system--Douglas C. Borba.

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
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DIRECT QUESTIONS REGARDING THIS RULE TO:

Jud Weiler at the above address, by phone at (801) 530-6731, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.jweiler@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 06/14/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 05/17/1999, 9:00 a.m., 4112 State Office Building, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: A. Gary Bowen, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rules.
R156-56-704. Amendments to the UBC.**

(1) Statewide Amendments

Chapter 1, Section 101.3 is amended by adding the following paragraph:

"The appendix chapters of this code are approved for adoption in each political subdivision of the State provided that each said political subdivision shall furnish to the Division a list of adopted chapters of the appendix to be kept on file. Where this code is not adopted by any political subdivision, the use of the appendix chapters shall be as determined by the Division with the concurrence of the Commission".

Chapter 1, Section 104.1 is amended as follows:

"There is hereby established in each political subdivision of the state a code enforcement agency which shall be under the administrative and operational control of the building official. The building official shall be appointed by the local regulator. If the local regulator fails to appoint a building official, the Director of the Division of Occupational and Professional Licensing with the Commission shall appoint one".

Chapter 1, Section 109.1 is amended by replacing the exception with the following:

EXCEPTION: Group R, Division 3 and Group U Occupancies; provided local jurisdictions may require a certificate of occupancy for Group R, Division 3 occupancies.

Chapter 3, Section 305.2.3 is amended as follows:

The following section is added after the title of Section 305.2.3 Special Provisions:

305.2.3.1 Kindergarten, first- or second-grade pupils.

Delete in its entirety the last paragraph of Section 305.2.3 which reads "Stages and platforms shall be construed in accordance with Chapter 4. For attic space partitions and draft stops, see Section 708".

Chapter 3, Section 305.2.3.2 is added as follows:

305.2.3.2 Day Care for 7 to 12 persons. Areas used for day care purposes of not less than seven persons and not more than 12 persons may be located in a dwelling unit, provided the building substantially complies with the requirements for a Group R, Division 3 occupancy. The increased requirements in Chapter 10 for occupant loads of 10 or more shall not apply. In addition, dwellings used for day care shall be provided with the following:

1. Areas used for group day care shall have two separate means of egress arranged so that if one is blocked, the other will be available.

a. Exit doors, other than the main exit, may be 32 inches wide.

b. When area is located in the basement or on the second floor, one of the exits must discharge directly to the outside.

c. Any interior stairway used as an exit from a basement shall be enclosed by a smoke and draft barrier which includes a self-closing, 20 minute fire-rated door assembly.

2. Group day care uses located in dwelling units shall not be located above the second floor.

3. Rooms used for sleeping shall have at least one window or door approved for emergency escape per Section 310.4.

4. Closet door latches shall be such that children can open the door from the inside of the closet.

5. Bathroom door locks shall be readily openable by staff from the outside.

6. Smoke detectors shall be installed in accordance with Section 310.9.1, including existing dwelling units.

Chapter 3, Section 305.2.3.3 is added as follows:

305.2.3.3 Other. Stages and platforms shall be constructed in accordance with Chapter 4. For attic space partitions and draft stops, see Section 708.

Chapter 9, Section 904.1.1. is amended to add a fifth paragraph as follows:

Section 904.1.1. General; Protection against backflow shall be provided per Section 608.16.4 of the International Plumbing Code.

Chapter 10, Section 1004.3.4.3.2.1, Doors is amended by renumbering the existing exception as No. 1 and adding Exception 2. as follows:

2. In Group E-1 and E-2 occupancies that are fully protected by an approved fire sprinkler system, the door closers may be of the friction hold open type on classrooms only. In non-sprinkled E-1 and E-2 occupancies, classroom doors shall be held open only by a magnetic hold open device.

Chapter 10, Section 1003.3.3.6 is amended by adding an exception to the third paragraph as follows:

Exception: Handrails serving an individual unit in a Group R, Division 1 or Division 3 Occupancy may have either a circular cross section with a diameter of 1 1/4 inches (32 mm) to 2 inches (51 mm), or a non-circular cross section with a perimeter dimension of at least 4 inches (102 mm) but not more than 6 5/8 inches (168 mm) and a largest cross sectional dimension not exceeding 3 1/4 inches (83 mm). The perimeter on non-circular cross sections shall be measured from one side of the cross section, 2 inches (51 mm) down from the top or crown.

An indentation is required on both sides of non-circular handrail cross sections. This indentation must be in the area of the sides between 5/8 inch (16 mm) and 1 1/2 inches (38 mm) down from the top or crown of the cross section. The indentation shall be a minimum of 1/4 inch (6 mm) deep on each side and shall be at least 1/2 inch (13 mm) high.

Edges within the handgrip shall have a minimum radius of 1/16 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

Chapter 11, Section 1103.1.9.3 is amended as follows:

The following is added as Exception 6.:

6. When a change of use in the building or portion of the building results in multi-unit dwellings as defined in this section, only 20% of the dwelling units need to be Type B dwelling units. These dwelling units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling units, shall be Type A dwelling units.

Chapter 16, Section 1612.3.2, Exception 2 is amended to read as follows:

2. Snow loads over 30 psf may be reduced in accordance with Section 1630.1.1, Item 3 (amended), and snow loads 30 psf or less need not be combined with seismic.

Chapter 16, Section 1630.1.1, Item 3 is amended as follows:

3. Design snow loads of 30 psf or less need not be included. Where the snow load exceeds 30 psf, the snow load shall be included. The snow load shall be adjusted in accordance with the following formula: $W_s = (0.25 + 0.025(A-5))P_f$

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

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

P_f = Design roof snow load, psf.

Chapter 18, Section 1806.6.1 is amended by adding the following exception at the end of that section:

Exception: When anchor bolt spacing does not exceed 32 inches on center.

Chapter 23, Section 2316.2, Item 6 is amended by adding footnote 3, reference from "two months", to read as follows:

(6) When the accumulated duration of the full maximum load during the life of the member does not exceed the period indicated below, the values may be increased in the tables as follows:

3 as for snow below 5000 feet elevation.

Chapter 23, Section 2307 is amended by adding exception 5 as follows:

5. Veneer of brick or stone applied as specified in Section 1403.6 may be supported on structural glued-laminated timber or laminated veneer lumber provided that the beam be designed to limit the dead load deflection to 1/800 of the span and the total load deflection to 1/600 of the span with due consideration given for shrinkage and creep. The beam shall be protected from exposure to weather as required for dwelling under Section 1402.1.

Chapter 34, Section 3403.2 is amended as follows:

The following is added after the exceptions:

Buildings constructed prior to 1975 with parapet walls, cornices, spires, towers, tanks, signs, statuary and other appendages shall have such appendages evaluated by a licensed engineer to determine resistance to design loads specified in this code when said building is undergoing reroofing, or alteration of or repair to said feature.

EXCEPTION: Group R-3 and U occupancies.

Original plans and/or structural calculations may be utilized to demonstrate that the parapets or appendages are structurally adequate. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce or remove the deficient feature.

The maximum height of an unreinforced masonry parapet above the level of diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Zones Nos. 3 and 4. If the required parapet height exceeds this maximum height, a bracing system designed for the forces specified in Table 16-0 for walls shall support the top of the parapet. When positive diaphragm connections are absent, tension roof anchors are required. Approved alternate methods of equivalent strength will be considered when accompanied by engineer sealed drawings, details and calculations.

Appendix Chapter 3, Division IV, Requirements for Group R, Division 4 Occupancies, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 11, Division I, Site Accessibility, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 11, Division II, Accessibility For Existing Buildings, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 13, Energy Conservation in New Building Construction, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 13, Section 1302.2 is amended as follows:

In order to comply with the purpose of this appendix, low-rise residential buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the International Conference of Building Code Officials (ICBO); the Southern Building Code Congress International, Inc. (SBCCI); the Building Officials and Code Administrators International, Inc. (BOCA); and the National Conference of States on Building Codes and Standards, dated 1995. Commercial and high-rise residential buildings shall be designed to comply with the requirements of the Energy Code for Commercial and High-Rise Residential Building, which is a codification of ASHRAE/IES Standard 90.1 - 1989, Energy Efficient Design of New Buildings except Low-Rise Residential Buildings.

The Model Energy Code is amended as follows:

Section 502.2.1 Walls is amended as follows:

Equation 1 shall be used to determine acceptable combinations to meet this requirement, and when metal studs are used, U_w -values shall be those calculated using appropriate correction factors for thermal bridging of insulation as published in Section 8 of RS-1; or calculated using ASHRAE RS-4 approved methodology for either serial or parallel path thermal transfer; or U -values compiled in Table 8-Y of the "User's Manual" for ASHRAE/IES Standard 90.1-1989, which is hereby incorporated by reference and which shall be available at all offices issuing building permits or the Division of Occupational and Professional Licensing or insertion in the Model Energy Code.

Simplified prescriptive maps, tables or other compliance aids, manuals or computer programs as may be supplied by DOE/Pacific Northwest Laboratory or others, when certified by the state or its agencies, may be used to demonstrate energy code compliance.

ASHRAE/IES Standard 90.1-1989 is amended as follows:

Section 101.3.1.2 Exceptions:

(4) The building official may approve designs which do not fully conform with all of the requirements of this code where in the opinion of the building official full compliance is physically impossible and/or economically impractical.

Appendix Chapter 16, Division I, Snow Load Design is adopted and incorporated by reference.

Appendix Chapter 16, Division I, Section 1639 is amended as follows:

The ground snow load, P_g to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A - A_o)^2)^{1/2}$ for A greater than A_o , and $P_g = P_o$ for A less than A_o .

WHERE:

P_g = Ground snow load at a given elevation (psf)

P_o = Base ground snow load (psf) from Table A-16-C

S = Change in ground snow load with elevation (psf/1000 ft), from Table A-16-C

A = Elevation above sea level at the location for which snow load is being determined (ft/1000)

A_o = Asymptote and zero ground snow axis intercept (ft/1000) from Table A-16-C

The ground snow load, P_g , may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record. The building official may round the snow load to the nearest 5 psf.

TABLE NO. A-16-C
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P_o	S	A_o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

Appendix Chapter 29, Minimum Plumbing Facilities, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 29 is amended as follows:

The following is added as footnote 7:

7. When provided, there shall be an equal number of diaper changing facilities for men as for women.

Appendix Chapter 30, Elevators, Dumbwaiters, Escalators and Moving Walks, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 30, Section 3012 is amended as follows:

The following is added at the end of Section 3012:

Exceptions to ANSI/ASME A17.1:

(1) Delete Rule 102.2(c)(3); and

(2) Rule 102.2(c)(4) shall apply to all elevators except hydraulic elevators with 50 feet of travel or less.

Chapter 9-1 of the UBC Standards is amended as follows:

Replace the current Uniform Building Code Standard 9-1 (NFPA-13, 1991 edition) with the fire sprinkler standard, NFPA-13, 1996 edition.

Chapter 9-3 of the UBC Standards is amended as follows:

Replace the current Uniform Building Code Standard 9-3 (NFPA-13R, 1989 edition) with the fire sprinkler standard, NFPA-13R, 1996 edition.

(2) Local Amendments

Beaver County

Beaver County adopted Appendix Chapter 3, Division II.

Heber City Corporation

Heber City Corporation adopted Appendix Chapter 33.

Murray City Corporation adopted Appendix Chapter 3 Division II, Appendix Chapter 31 Division III, and Appendix Chapter 33.

City of North Salt Lake

City of North Salt Lake adopted Appendix Chapter 3, except Section 332, Appendix Chapter 9, Appendix Chapter 12, Division I, Appendix Chapter 15, Appendix Chapter 31, Division II and III and Appendix Chapter 33.

City of Orem

City of Orem adopted Appendix Chapter 3, Division I, Appendix Chapter 3, Division II, Appendix Chapter 31, Division III, and Appendix Chapter 33.

Park City Corporation

Chapter 9, Section 904.2.1 is amended by adding the following sections:

904.2.1.1 All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

904.2.1.2 All new construction having more than two (2) stories, except R-3 occupancy.

904.2.1.3 All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

904.2.1.4 All new construction in the Historic Commercial Business zone district, regardless of occupancy.

904.2.1.5 All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

904.2.1.6 All existing building within the Historic District Commercial Business zone by August 15, 1996.

Park City Corporation

Chapter 15, Table No. 15-A. The following is added as footnote 5:

5 Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Park City Corporation

Chapter 33, Section 3306.2 is amended as follows:

Omit paragraph 1 and add a period after the word "excavation" in the third line of paragraph 2 and omit "nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure". Delete paragraphs 8 and 9. Re-number the sections and add a new paragraph 7 requiring a permit for removal of substantial vegetation, shrubs, trees and stabilizing grass, but not to include weeds.

Park City Corporation adopted Appendix Chapter 3 Division II, Chapter 4 Division II, Chapter 12 Division II, Chapter 13, Chapter 15, Chapter 30, Chapter 31 Division I and Chapter 33.

Salt Lake County

Salt Lake County adopted Chapter 15, Chapter 16, Division III, Chapter 31, Division II, Chapter 31, Division III and Chapter 33.

City of St. George

City of St. George adopted Appendix Chapter 3 and Appendix Chapter 33.

Sandy City

Chapter 9, Section 904.2 is amended as follows:

An automatic fire sprinkler system shall be installed in all occupancies where the required fire flow exceeds 2,000 gallons per minute based on Table A-III-A-1 of the 1994 Uniform Fire Code.

Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R, Division 3 and Group U occupancies.

Summit County

Summit County adopted Appendix Chapter 33.

Summit County

Chapter 9, Section 904.2

1. All new construction having more than 6,000 square feet on any one floor, except R-3 and U occupancies.

2. All new construction having more than two (2) stories, except R-3 and U occupancies.

3. All new construction having three (3) or more dwelling units, including units rented or leased and including condominiums or other separate ownership.

4. All newly constructed structures used as dwelling units in a multi-unit structure shall have at least an one hour fire resistive separation between units.

Washington City

Washington City adopted Appendix Chapter 33.

City of West Jordan

City of West Jordan adopted Appendix Chapter 3, Division II, Appendix Chapter 4, Division II, Appendix Chapter 13 and Appendix Chapter 33.

R156-56-706. Amendments to the IPC.

(1) Statewide Amendments

Section 103.1 is deleted in its entirety.

Section 103.2 is deleted in its entirety.

Section 103.3 is deleted in its entirety.

Section 103.4 is deleted in its entirety.

Section 103.5 is renumbered as Section 103.1.

Section 107.1.1 is deleted in its entirety.

Section 109 is retitled as "Board of Appeal".

Section 109.1 is deleted and replaced with the following:

109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be and is hereby created a local board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to building construction and who are not employees of the jurisdiction. The code official shall be an ex officio member of and shall act as secretary to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and finding in writing to the appellant with a duplicate copy to the code official.

Sections 109.2 through 109.7 are deleted in their entirety.

Section 202 General Definitions is revised as follows:

The definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

The definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

The following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

The definition for "Code Official" is deleted and replaced with the following:

Code Official. The individual official, board, department or agency established and authorized by a state, county, city or other political subdivision created by law to administer and enforce the provisions of the plumbing code as adopted or amended. This definition shall include the code official's duly authorized representative.

The definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

The following definition is added:

Emergency Floor Drain. A floor drain installed for the primary purpose of collecting water from emergency spills or water line breaks.

The following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

The definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as

amended and the regulations of the public health authority having jurisdiction.

The definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

Section 312.9 is deleted in its entirety.

Section 403.1 is deleted and replaced with the following:

403.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Appendix Chapter 29, Uniform Building Code.

Table 403.1 is deleted in its entirety.

Section 403.2 is deleted and replaced with the following:

403.2 Hand sink location. Hand sinks in commercial food establishments shall be located accessible to food preparation areas, food service areas, dishwashing areas, and toilet rooms in accordance with Rule R392-100-5, Utah Administrative Code. Hand sinks in child care facilities shall be installed in accordance with R430-5(19)(5) a and b, Utah Administrative Code.

Sections 403.4, 403.5 and 403.6 are deleted in their entirety.

Section 409.1 is deleted and replaced with the following:

409.1 Approval. Domestic dishwashing machines shall conform to ASSE (American Society of Sanitary Engineering) 1006. Commercial dishwashing machines shall conform to ASSE 1004, NSF (National Sanitary Foundation) 3 or NSF 26.

Section 409.3 is deleted and replaced with the following:

Section 409.3 Waste connection. Domestic pump-type dishwashers may be directly connected to the inlet side (top or head) of an approved food waste disposal unit or a branch tailpiece in the tailpiece of the sink, by the drain hose being extended and secured as high as possible under the bottom of the counter top before it is connected to the branch tailpiece located above the trap or to an approved food waste disposal unit.

Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one floor drain with a wall mounted hose bibb, or at least one emergency floor drain.

Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1, ASME A112.19.2, ASME A112.19.3, ASME A112.19.4, ASME A112.19.9, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

Section 425.1.1 - The following exception is added after the paragraph.

Exception: Multiple urinals with an automatic flushing device.

Section 502.6 is added as follows:

502.6 Water Heater Seismic Bracing. In seismic zones 3 and 4, water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal

direction, or in accordance with the appliance manufacturers recommendations.

Section 504.8.1 is amended as follows:

The measurement of "1 inch" in the last sentence of the paragraph is replaced with the measurement "1 1/2 inch".

Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

Sections 602.3.1, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

Section 606.2 is deleted and replaced with the following:

606.2 Location of shutoff valves. Shutoff valves shall be installed in the following locations:

- 1. On the fixture supply to each plumbing fixture.

Exception: 1) bath tubs and showers.

Exception: 2) in individual guest rooms that are provided with unit shutoff valves in hotels, motels, boarding houses and similar occupancies.

- 2. On the water supply pipe to each sillcock.

3. On the water supply pipe to each appliance or mechanical equipment.

Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

Section 608.1 - The following sentence is added at the end of the paragraph: Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

Table 608.1 is deleted and replaced with the following:

TABLE
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR,	High or Low	Backpressure or Backsiphonage	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor.

ASSE 1013
CSA CNA/CSA-B64.4)
and Reduced Pressure
Detector Assembly
(ASSE 1047, USC-
FCCCHR)

Double Check Low
Backflow Prevention
Assembly
(AWWA C510,
USC-FCCCHR,
ASSE 1015)
Double Check
Detector Assembly
Backflow Preventer
(ASSE 1048,
USC-FCCCHR)

Pressure High or
Vacuum Low
Breaker
Assembly
(ASSE 1020,
USC-FCCCHR)

Spill High or
Resistant Low
Vacuum
Breaker
(ASSE 1056,
USC-FCCCHR)

Backpressure or
Bacsiphonage
1/2" - 16"

Bacsiphonage
1/2" - 2"

Bacsiphonage
1/4" - 2"

- b. RP assemblies shall NOT be installed in a pit.
- c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents.
- d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.

- a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance.
- b. Shall be installed in a horizontal position unless listed or approved for vertical installation.

- a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.
- b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.
- c. Shall not be installed below ground or in a vault or pit.
- d. Shall be installed in a vertical position only.

- a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.
- b. Shall be installed a minimum of 6 inches above all downstream piping and the highest point of use.

- c. Shall not be installed below ground or in a vault or pit.
- d. Shall be installed in a vertical position only.

Atmospheric High or Vacuum Low Backsiphonage Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1

- a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.
- b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time.
- c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use.
- d. Shall be installed on the discharge (downstream) side of any valves.
- e. The AVB shall be installed in a vertical position only.

General Installation Criteria

The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed.

The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance.

In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.

Assemblies shall be maintained as an intact assembly.

Table 608.1.2 is added as follows:

TABLE 608.1.2
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1032
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

Section 608.3.1 - The following sentence is added at the end of the paragraph: All piping and hoses shall be installed below the atmospheric vacuum breaker.

Section 608.7 is deleted in its entirety.

Section 608.8 - The following sentence is added at the end of the paragraph: In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

Section 608.11 - The following sentence is added at the end of the paragraph: The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

Section 608.13.4 is deleted in its entirety.

Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

Section 608.15.4.2 - The following is added at the end of the paragraph: In climates where freezing temperatures occur, a listed, self-draining frost proof hose bibb with an integral backflow preventer shall be used.

Section 608.16.1 is deleted and replaced with the following:

608.16.1 Beverage dispensers. Potable water supply to carbonators shall be protected by a stainless steel vented dual check valve installed according to the requirements of this chapter.

Section 608.16.2 - The first sentence of the paragraph is deleted and replaced as follows:

608.16.2 The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the two walls. Heat exchangers shall be permitted to be of single wall construction under one of the following conditions:

1. a. Utilize a heat transfer medium of potable water or only substances which are recognized as safe by the United States Food and Drug Administration (FDA); and

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

Exception: Steam complying with paragraph 1 above; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Approved listed electrical drinking water coolers.

Section 608.16.4 is deleted and replaced with the following:

Section 608.16.4 Connections to automatic fire sprinkler systems and standpipe systems. The potable water supply to automatic fire sprinkler and standpipe systems shall be protected against backflow by an alarm check valve and spring loaded check valve assembly as shown on the diagram entitled "Riser Detail", dated July 1, 1999, published by State and Local Building Codes Amendments, Department of Commerce, Division of Occupational

and Professional Licensing, which is hereby adopted and incorporated by reference.

Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

Section 608.16.10 is added as follows:

608.16.10 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

Section 608.17 is deleted in its entirety.

Section 608.18 is added as follows:

608.18 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and the Reduced Pressure Detector Assembly.

Section 612 is added as follows:

612. Gray Water

Gray Water Recycling Systems, Appendix C of the IPC, cannot be adopted by any jurisdiction until January 1, 2000.

Section 701.2 - The following is added at the end of the paragraph: The sewer is considered as available when within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended. Private sewage disposal systems shall conform with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

Section 802.1.1 is deleted and replaced with the following:

802.1.1 Food handling. Equipment and fixtures utilized for the storage, preparation and handling of food or food equipment shall discharge through an indirect waste pipe by means of an air gap.

Exception: This requirement shall not apply to dishwashing machines and dishwashing sinks. This requires commercial dishwashing machines and dishwashing sinks to discharge through an air gap or an air break.

Section 802.3 is amended as follows:

The term "waste receptors" in the last sentence of the paragraph is replaced with the term "floor sinks".

Section 802.3.2 is deleted in its entirety.

Section 904.6 - The following sentence is added at the end of the paragraph: Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

Section 917.2 is deleted and replaced with the following:

917.2 Installation. The valves may be installed in accordance with the requirements of this section and the manufacturers installation instructions when approved by the code official. Air admittance valves shall be installed after the DWV testing required by Section 312.2 or 312.3 has been performed.

Section 1002.4.1 is added as follows:

1002.4.1 Emergency floor drains. Each emergency floor drain shall be installed with a trap seal primer. Trap seal primer shall conform to ASSE 1018 or ASSE 1044.

Section 1003.3.3 is added as follows:

1003.3.3 Grease trap restriction. Unless specifically required or permitted by the code official, no food waste grinder or dishwasher shall be connected to or discharge into any grease trap.

Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm with sanitary drainage. The sanitary and storm drainage systems of a structure shall be entirely separate.

Section 1108 is deleted in its entirety.

Section 1201.2 is deleted and replaced with the following:

1201.2 Fuel piping systems. All fuel piping systems shall be sized, installed, tested and placed in operation in accordance with the requirements of the 1998 International Mechanical Code.

Appendix G, Section G110 is deleted, renumbered and replaced with the following:

Section 1202 CNG GAS-DISPENSING SYSTEMS

1202.1 Dispenser protection. The gas dispenser shall have an emergency switch to shut off the power to the dispenser. An approved backflow device that prevents the reverse flow of gas shall be installed on the gas supply pipe or in the gas dispenser.

1202.2 Ventilation. Gas-dispensing systems installed inside the structure shall be ventilated by mechanical means in accordance with the 1998 International Mechanical Code.

1202.3 Compressed natural gas vehicular fuel systems. Compressed natural gas (CNG) fuel-dispensing systems for CNG-fueled vehicles shall be designed and installed in accordance with NFPS 52 and the uniform fire code.

Chapter 14, Referenced Standards, is amended as follows:

NSF - Standard Reference Number 61-95 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE

USC- Foundation for Cross-Connection Control Table 608.1
FCCCHR Control and Hydraulic Research
9th University of Southern California
Edition Kaprielian Hall 300
Manual Los Angeles CA 90089-2531
of Cross
Connection

KEY: contractors, building codes, building inspection, licensing
[January 1,]1999 58-1-106(1)
Notice of Continuation June 3, 1997 58-1-202(1)
58-56-1
58-56-4(2)
58-56-6(2)(a)



Education, Administration **R277-458** 70% Utilization of School Buildings

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 22025

FILED: 04/30/1999, 15:34

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because of conflict among competing state laws and the implementing rules.

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

(DAR Note: This action by the Board of Education will permanently repeal Rule R277-458. A corresponding emergency repeal of this rule is under DAR No. 22024 in this issue of the *Bulletin*, and is effective April 30, 1999. These rulemaking actions effectively eliminate the need for the Division of Administrative Rules (Division) to take further action pursuant to H.B. 193 (1999 Utah Laws 373). H.B. 193 did not reauthorize Subsection R277-458-3(C)(3)(a). Additionally, H.B. 193 required the Division to "make amendments to any rules necessary to conform the rule content and structure, including renumbering subsections and deleting cross-references made obsolete by the repeal of . . . Subsection [R277-458-3(C)(3)(a)] . . ." The Division found no other content, structure, subsection numbering, or cross-references that had been made obsolete beyond those that appeared in Rule R277-458.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Repeal of this rule may reduce the cost for computation of school utilization necessary to determine whether a school must be closed.

❖LOCAL GOVERNMENTS: Repeal of this rule may reduce the cost for computation of school utilization necessary to determine whether a school must be closed.

❖OTHER PERSONS: Unknown--reduced expenses relating to elimination of forced transfers from closed schools to other schools in the district.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Potential costs or savings are speculative. For instance, without a 70% floor

for schools, districts could, due to parental pressure, keep schools open at very cost-prohibitive levels. Or, districts could arbitrarily close certain schools and not others and face expensive litigation based on equity. The possible losses to district funds are in addition to the potentially increased costs/taxes to local taxpayers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses--Steven O. Laing.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

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 06/14/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Carol B. Lear, School Law Specialist

R277. Education, Administration.

[R277-458. 70% Utilization of School Buildings:

R277-458-1. Definitions:

- A. "Board" means the Utah State Board of Education.
- B. "Instructional station" means a classroom, laboratory, shop, study hall, or physical education facility designed for student instruction. For example, if a gymnasium were designed to accommodate two P.E. classes, the gymnasium would represent two instructional stations.
- C. "Intolerable classroom" means a space too small for intended use, a space with undesirable environmental conditions that cannot be corrected, approved rent space, makeshift space, a library or stage used as a classroom, and any space declared unsuitable by the State Fire Marshal.
- D. "Five-year plan" means the comprehensive capital outlay plan required under R277-452.

R277-458-2. Authority and Purpose:

— A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-17a-142 which requires that school buildings operate at no less than 70% of maximum capacity and provides exceptions, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

— B. The purpose of this rule is to specify standards for the efficient use of public school buildings:

R277-458-3. School Building Utilization:

— A. As part of its five-year plan, a local school district shall certify to the Board based upon October 1 of the current year or the previous year peak student enrollments:

- (1) that the district is in compliance with Section 53A-17a-142 and Board standards regulating school building utilization. A district may demonstrate compliance with Section 53A-17a-142 by using eighty percent capacity if computed with the student instruction stations option (see Sections 3(C)(2) and (3)); and
- (2) the calculated capacity of each school in the district.

— B. A school need not meet either student capacity standard of Section 3(A)(1) if it qualifies under any of the following:

- (1) the nearest elementary school for transfer purposes is more than a three-mile radius in distance from other elementary schools;
- (2) the nearest middle or junior high school for transfer purposes is more than a five-mile radius in distance from other middle or junior high schools;
- (3) the nearest high school for transfer purposes is more than a ten-mile radius in distance from other high schools;
- (4) the school operating at less than the student capacity standard could not be closed and the students moved to eligible transfer schools without the transfer schools exceeding 100% of capacity as determined by R277-458-3C(1);
- (5) there is only one elementary school, one junior high or middle school, and one high school in the district.

— C. Student capacity is determined as follows:

— (1) computing building capacity according to one of the following three options:

- (a) 70% Standard: computing the capacity based on Utah State Office of Education square feet per student criteria;
- (b) Student Instructional Space Standard: computing capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3);
- (c) 70% Average Capacity Standard: computing the average of capacity based on Utah State Office of Education square feet per student criteria, and capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3).

— (2) identifying by room number or description each instructional station within a school. Intolerable classrooms and auxiliary spaces are not counted in calculating student capacity. Instructional spaces of less than 500 square feet in area, except for spaces for special education, are not counted in calculating student capacity. Rented instructional space may be excluded in computing building capacity providing rental fees cover district overhead costs for maintenance and operation. If option (b) is used and intolerable classrooms and spaces are excluded from the capacity calculation, schools must operate at 80% of capacity;

— (3) determining the number of student instructional stations or the student capacity of each room or instruction station identified:

- (a) in computing capacity of regular classrooms, the following standards apply:
 - (i) kindergarten: 20 students per classroom, per day--two one-half day sessions;
 - (ii) grades one through three: 15 students per classroom;
 - (iii) grades four through six: 20 students per classroom;
 - (iv) junior high and middle school: 20 students per classroom;
 - (v) junior high/senior high combinations: 20 and one-half students per classroom;
 - (vi) senior high: 20 students per classroom.

— (b) student capacity for laboratories, physical education facilities, shops, study halls, self-contained special education classrooms, facilities jointly financed by school districts and another community agency for joint use, and similar rooms must be calculated individually. Capacity for self-contained special education classrooms shall be based upon students per class as defined by Board special education standards. Sufficient documentation must be filed to be available for audits.

— (c) capacities of relocatable classrooms are included if in use;

— (d) auditoriums; multi-purpose rooms; not more than one elementary school computer laboratory per elementary school; library media centers; rooms for federal Headstart programs; other rooms used for required state or federal programs; auxiliary spaces, such as stages, laboratories which are part of vocational or science programs; and pull-out rooms within team-teaching spaces are not included in calculating student instruction stations.

— (e) a district which adopts a voted leeway specifically to reduce classroom size may use student capacity goals stipulated in its leeway election literature or its board minutes to establish a lesser instruction station capacity. Instruction station capacity may be reduced by the same percentage as the district decrease in teacher-pupil ratios as a result of the leeway.

— (4) adjusting, at the option of the district, with Utah State Office of Education approval, for building capacity which is based on square foot data for the following:

— (a) self-contained classrooms for handicapped students. The square footage for the classroom may be reduced proportionally according to the ratio of the regular student capacity of the room less the recommended students per class as defined by the Board special education standards, divided by the regular student capacity of the room;

— (b) approved rental instructional areas;

— (c) facilities jointly financed and used by a school district and another community agency. Reductions are made proportionally to the community share for capital costs;

— (d) a voted leeway adopted specifically to reduce class size. The square footage for a building may be reduced by the same percentage as the decrease in teacher-pupil ratios resulting from the voted leeway.

— D. If undue hardship or inequities are created through exact application of the standards adopted under this section, a school district may request the Board to make exceptions in individual cases.

— E. Schools which do not meet the seventy per cent utilization or the student instructional space standard may be granted exception if:

— (1) the school district demonstrates to the satisfaction of the Board that the school is in a projected high student growth area, including inter and intra district student transfers, in which the school is projected to reach seventy per cent utilization within three years' time;

— (2) the school is being closed by action of the local board with closure to be accomplished by the end of the following school year; or

— (3) the school district demonstrates to the satisfaction of the Board that costs incurred in complying with the standards exceed the costs of continued operation of a facility.

— F. District school building plans approved by the Board may not exceed the Utah State Office of Education per student space

criteria unless the district has only one elementary school, one junior high or middle school, and one high school.

R277-458-4. Guidelines for Day Care Centers in Public Schools:

— A. A school district board may authorize the use of part of a school building for a child care center only if the school is in compliance with Section 53A-17a-142.

— B. Establishment of a child care center in a public school building is contingent upon the local school board determining that the center will not interfere with the building's use for regular school purposes.

— C. The decision in Subsection (4)(B) shall be made at the sole discretion of the local school board.

KEY: education finance, educational facilities
~~August 15, 1998~~ ~~Art X Sec 3~~
~~Notice of Continuation April 15, 1997~~ ~~53A-1-401(3)~~
~~53A-17a-142]~~



Health, Administration
R380-25
Submission of Data Through an
Electronic Data Interchange

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21984

FILED: 04/22/1999, 13:31

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is needed to begin a pilot study with data suppliers, the Department of Health, and the Utah Health Information Network (UHIN). Data suppliers and the Department of Health will be able to determine if electronic data interchange is a feasible way of submitting data to the Department of Health.

SUMMARY OF THE RULE OR CHANGE: This rule allows data suppliers to submit health data to the Department of Health and the Office of Health Data Analysis through an electronic data interchange (EDI).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 26-1-30(2)(d), 26-1-30(2)(e), 26-1-30(2)(f), 26-1-30(2)(g), 26-1-30(2)(p), and 26-1-30(2)(w), and Sections 26-3-5 and 26-3-6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The total maximum cost is \$25,104. The Department of Health (DOH) will buy a translator (\$10,000-15,000) to read incoming data and convert data into forms that DOH programs can read. DOH will pay for additional storage space for the large volume of claims

expected. DOH will add 36 gigabytes of storage space at \$250/gigabyte (\$9,000). The additional 36 gigabytes (on 4 drives) will cost \$276 per drive per year for hardware maintenance services from Hewlett Packard (\$1,104). The Utah Health Information Network (UHIN) has indicated that there will be no charge to DOH for connecting and receiving data through the UHIN during the pilot study. UHIN does not plan on charging for data that DOH receives through UHIN after the pilot study is over.

❖LOCAL GOVERNMENTS: This rule does not apply to local governments and has no fiscal impact on them.

❖OTHER PERSONS: There is no additional cost to data suppliers to submit data through UHIN to DOH. There will be no additional cost to data suppliers or health insurers for UHIN to carbon copy data to DOH.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Data suppliers in Utah already use electronic data interchange technology for total or partial submission of claims to health insurers. Initial costs to the state would be significant and the costs would include the purchase of new hardware to accommodate the large volume of data, revision of technical specifications and rules, and the establishment of adequate processes to edit, test and verify data quality. These costs are expected to be offset by reduced data collection costs in the future, once the system is fully developed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: During the pilot study the only business (UHIN) that will experience a direct fiscal impact from this rule has agreed to not charge for the connection and transmission of the data to the Department. Other businesses that submit information to UHIN which will then be transferred to the Department should not experience a fiscal impact, but their comments, if any, will be carefully evaluated before the rule becomes final--Rod L. Betit.

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

Health Administration
Cannon Health Building
288 North 1460 West
PO Box 144004
Salt Lake City, UT 84114-4004, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Luis Paita at the above address, by phone at (801) 538-6386, by FAX at (801) 538-8816, or by Internet E-mail at lpaita@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 06/14/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Rod L. Betit, Executive Director

R380. Health, Administration.

R380-25. Submission of Data Through an Electronic Data Interchange.

R380-25-1. Purpose and Authority.

This rule provides for the submission of information to the Department of Health through an electronic data interchange (EDI). Subsections 26-1-30(2)(d), 26-1-30(2)(e), 26-1-30(2)(f), 26-1-30(2)(g), 26-1-30(2)(p), and 26-1-30(2)(w); Sections 26-3-5; and 26-3-6 authorize this rule.

R380-25-2. Definitions.

These definitions apply to the rule:

(1) "Health data" as defined in Subsection 26-3-1(2).

(2) "Electronic data interchange" means an entity that receives billing, claim, or other electronically transmissible information from a data supplier and transmits it to another party.

(3) "Data supplier" as defined in Section 26-33a-102(3).

R380-25-3. Confidentiality.

(1) Health data received by the Department of Health is confidential and protected as provided in Title 26, Chapter 3.

(2) The Department of Health shall not store or use any information it receives from an EDI that the Department is not authorized to collect by statute, rule or agreement with a data supplier.

(3) An EDI that receives and forwards health data or other information to the Department of Health on behalf of a data supplier without inspecting the contents of the information does not violate patient confidentiality or individual privacy rights.

R380-25-4. Required Forwarding.

An EDI that is instructed by a data supplier to forward information to the Department of Health must do so as instructed.

KEY: health, electronic data interchange

- 1999**
- 26-1-30(2)(d)**
- 26-1-30(2)(e)**
- 26-1-30(2)(f)**
- 26-1-30(2)(g)**
- 26-1-30(2)(p)**
- 26-1-30(2)(w)**
- 26-3-5**
- 26-3-6**

◆ **Health, Health Care Financing,
Coverage and Reimbursement Policy** ◆

R414-302

Eligibility Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21986

FILED: 04/23/1999, 12:12

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment to comply with Pub. L. No. 105-306(2), which extends Medicaid eligibility to certain aliens.

SUMMARY OF THE RULE OR CHANGE: The change is to comply with Pub. L. No. 105-306(2) which extends Medicaid eligibility to aliens who were receiving Supplemental Security Income (SSI) on August 22, 1996. The rule change also modifies language about aliens who were living in the United States before August 22, 1996. It also modifies Section R414-302-3 to clarify that applicants may apply at any local office or outreach program, or as required by the Department of Workforce Services (DWS).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Pub. L. No. 105-306(2), October 1998 and 105-33(5307)(a), August 1997; 42 CFR 435.406(a)(1) and 435.403, 1997 ed.; 20 CFR 416.201 and 416.211, 1997 ed.; 42 CFR 435.1008, 435.608, and 435.910, 1997 ed.; 42 CFR 433.138(b) and 435.610, 1997 ed.; 42 CFR 433.145 through 433.148, 1997 ed.; 42 CFR 435.602(a), 1997 ed.; and 45 CFR 233.106, 1997 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There should be no fiscal impact, as Medicaid has already been covering SSI aliens and other aliens living in the United States before Aug. 22, 1996.

❖LOCAL GOVERNMENTS: This rule does not apply to local government, so there should be no fiscal impact.

❖OTHER PERSONS: This rule merely extends benefits already being given, so there should be no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For reasons described under "Other persons," there should be no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule recognizes changes in federal law that has already been implemented by the Department. There should be no fiscal impact on businesses--Rod L. Betit.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gayle Six at the above address, by phone at (801) 538-6895, by FAX at (801) 538-6952, or by Internet E-mail at gsix@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 06/14/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-302. Eligibility Requirements.****R414-302-[20]1. Citizenship and Alienage.**

([1-]) The department adopts 42 CFR 435.406(a)(1), 199[5]7 ed., which is incorporated by reference. The [d]Department adopts Section 1137 and Subsection 1903(v) of the Compilation of the Social Security Laws, [~~1995 ed., U.S. Government Printing Office, Washington, D.C.]~~in effect January 1, 1998, which is incorporated by reference. The [d]Department adopts Pub.[he] L.[aw] 104-193 (401) through (403), (411), (412), (421) through (423), (431), and (435), as amended by Pub. L. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), [~~and~~](5571), and Pub. L. 105-306(2), which are incorporated by reference. The [d]Department adopts Pub. L. 105-33(5307)(a) and (5566) which are incorporated by reference.

(2-[]) The definitions in R414-1 and R414-301 apply to this rule.[Current department practices:]

([a-]3) The Department[director or designee] shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision [~~shall be based~~] on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

([b-]4) One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship.

([c-]5) A qualified alien, as defined in Pub. L. [~~No-~~]104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), [~~and~~] (5571), and Pub. L. 105-306(2), [~~admitted into~~]who was residing in the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

([d-]6) A qualified alien, as defined in Pub. L. No. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

R414-302-[20]2. Utah Residence.

The [d]Department adopts 42 CFR 435.403, 199[4]7 ed., which is incorporated by reference. The [d]Department adopts Subsection 1902(b) of the Compilation of the Social Security Laws, [~~1993 ed., U.S. Government Printing Office, Washington, D.C.]~~in effect January 1, 1998, which is incorporated by reference.

R414-302-[20]3. Local Office Residence.

Applicants may[shall] apply at any[the] local office or outreach location[in the area where they reside]. The Department may require applicants also applying for services from the

~~Department of Workforce Services or foster care Medicaid to apply at the local office in the area where they reside. Residence for foster care cases shall be the same area as that of the Division of Child and Family Services (DCFS) worker assigned to the case.]~~

R414-302-[20]4. Residents of Institutions.

(1[-]) The [d]Department adopts 20 CFR 416.201 and 416.211, 199[4]7 ed. and 42 CFR 435.1008, 199[4]7 ed., which are incorporated by reference.

~~2. Current department practices:~~

~~a. Persons in the custody of the criminal justice system are not eligible for Medicaid:]~~

([b-])2) ~~The Department does not consider p[P]ersons under the age of 18[are not considered] to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.~~

([c-])3) ~~The Department does not consider [A]an individual who resides in a temporary shelter for a limited period of time [is not considered]as a resident of an institution.~~

([d-])4) ~~The Department considers [F]ineligible residents of institutions for mental disease [shall be considered]as non-residents while on conditional or convalescent leave from the institution.[~~

~~c. Residents of any institution primarily engaged in the diagnosis, treatment or care of persons with tuberculosis are not eligible for Medicaid:]~~

R414-302-[20]5. Social Security Numbers.

(1[-]) The [d]Department adopts 42 CFR 435.910, 199[4]7 ed., which is incorporated by reference. The [d]Department adopts Section 1137 of the Compilation of the Social Security Laws, [1993 ed., U.S. Government Printing Office, Washington, D.C.]:in effect January 1, 1998, which is incorporated by reference.[

~~2. Current department practices:]~~

([a-])2) Clients must provide their correct Social Security Number (SSN).

([i-])a) ~~The Department requires [E]clients[are required] to provide their correct SSN or a proof of application for a SSN at the time of application for Medicaid.~~

([i-])b) ~~The Department requires [E]clients who do not know their SSN or provide a SSN that is questionable[are required] to provide proof of application for a SSN upon application for Medicaid.~~

([i-])c) Acceptable proof of application for a SSN is a Social Security Card, an official document from Social Security which identifies the correct number or a Social Security receipt form 5028, 2880, or 2853.

([i-])d) ~~The Department requires [A]a new proof of application for a SSN [is required]at each recertification if the SSN has not been provided previously.~~

R414-302-[20]6. Application for Other Possible Benefits.

The [d]Department adopts 42 CFR 435.608, 199[4]7 ed., which is incorporated by reference.

R414-302-[20]7. Third Party Liability.

1. The [d]Department adopts 42 CFR 433.138(b) and 435.610, 199[4]7 ed., and Section 1915(b) of the Compilation of the Social Security Laws, [1993 ed.]:in effect January 1, 1998, which are incorporated by reference.[

~~2. Current department practices:]~~

([a-])2) ~~The Department requires [E]clients[are required] to report any changes in third party liability information within 30 days.~~

([b-])3) ~~The Department considers [A]a client[shall be considered] noncooperative if the client knowingly withholds third party liability information.~~

([c-])4) ~~The Department[of Health, Division of Health Care Financing,] shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.~~

([d-])5) ~~The Department requires [E]clients residing in selected communities[will be required] to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll [E]clients who do not make a selection[will be enrolled] in a Health Maintenance Organization that the Department selects. The Department shall notify [E]clients[will be notified] of the Health Maintenance Organization that they will be enrolled in and allowed [10]ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within [10]ten days, the enrollment [will]shall become effective for the next benefit month.~~

R414-302-[20]8. Medical Support Enforcement.

The [d]Department adopts 42 CFR 433.145 through 433.148, 199[4]7 ed., which is incorporated by reference.

R414-302-[20]9. Relationship Determination for Family Medicaid.

The [d]Department adopts 42 CFR 435.602(a), 199[4]7 ed., which is incorporated by reference. The [d]Department requires compliance with Subsections 30-1-4.5 and 78-45-4.1.

R414-302-[2]10. Strikers - Family Medicaid.

The [d]Department adopts 45 CFR 233.106, 199[4]7 ed., which is incorporated by reference.

KEY: benefits, income

[January 2, 1998]1999

26-18

Notice of Continuation February 6, 1998



**Health, Health Systems Improvement,
Health Facility Licensure**

R432-3

**General Health Care Facility Rules
Inspection and Enforcement**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21981

FILED: 04/21/1999, 15:37

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division identified some changes that needed to be made while performing the five-year review process.

SUMMARY OF THE RULE OR CHANGE: The rule makes minor wording changes modifying "facility" to include "facility and agencies" licensed by the Bureau; modifies the word "licensure" to correct the spelling to "licensing"; and corrects passive wording in the rule to be "active voice." In the proposed rule, the Department adds additional criteria under the sanctioning authority to permit the facility or agency to hire a Department-approved monitor instead of a Department employee and permits the Department the ability to place a temporary manager in a facility to ensure that the health and safety of the patients is maintained during the period of correction. The use of temporary managers is already permitted for medicaid nursing facilities. The rule amends the restriction on admissions and posting of notices to address a "pattern of harm" as a reason to prohibit admissions to a facility, in addition to the current language which addresses "actual harm or serious and immediate threat."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** It is not anticipated that there will be an additional cost to the Department, except for the publishing of the rule amendment which can be absorbed by current operating expenses.

❖**LOCAL GOVERNMENTS:** This filing poses no increased cost or savings to local governments as enforcement of this rule does not apply to local governments.

❖**OTHER PERSONS:** A health care facility or agency is required to hire a Department employee to monitor a facility during the time the facility or agency is under sanction and correcting deficiencies; the aggregate cost would be the hourly salary of the employee plus mileage. The rule change permits the health care facility or agency to hire a Department-approved person to perform the monitoring, and if the facility or agency hires an individual for less than the Department average salary of \$25 per hour plus mileage, then the facility or agency will realize a savings. If a temporary manager is required to be hired for three months, the aggregate increase in cost will be the salary and benefits of the temporary manager; it is estimated that could be as much as \$15,000, if the salary and benefits are \$5,000 per month. The Department has appointed one temporary manager in a nursing facility in the past five years under the Medicaid law. The addition of posting notices when there is a "pattern of harm" in a facility or agency should not impose an additional cost to the provider; the Department provides the notices to the facility or agency to post on the doors. The cost of printing these notices can be absorbed in the Department budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a facility or agency is required to hire a department approved monitor, the facility or agency will realize an annual cost of the hourly salary contracted, it is estimated that could be as much as \$3,000. If a facility or agency is required to hire a temporary

manager, the facility or agency will have an additional cost of \$15,000. Only one of the above persons would be required for the facility or agency during the period of correction or closure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Given the frail and vulnerable population served at facilities regulated by this rule, the cost for monitors or managers is amply justified in those instances where they are necessary to protect patients-
-Rod Betit.

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 06/14/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Rod L. Betit, Executive Director

R432. Health, Health Systems Improvement, Health Facility Licensure.**R432-3. General Health Care Facility Rules Inspection and Enforcement.****R432-3-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and Health Facility [~~Licensure~~]Licensing Bureau in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant [~~Licensure~~]licensing deemed status to facilities and agencies accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) or Community Health Accreditation Program [~~(CHAP)~~] in lieu of the annual [~~Licensure~~]licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

- (a) initiate deemed status,
- (b) continue deemed status, or
- (c) relinquish deemed status during the ~~[licensure]~~licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the ~~[summation]~~accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

- (a) ~~[A]~~accreditation ~~[E]~~certificate;
- (b) Joint Commission Statement of Construction;
- (c) ~~[S]~~survey ~~[R]~~reports and ~~[R]~~recommendations;
- (d) ~~[P]~~progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

~~(4) [Department Regulatory Responsibility. Regardless of deemed status, [F]the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:~~

- ~~(a) annual and follow up inspections,~~
- ~~(b) complaint investigation,[-or]~~
- ~~(c) verification of the [following:~~
 - ~~(i) V]violations of state law, rule, or standard identified in a Department survey or,[-~~
 - ~~(ii) V]violations of state law, rule, or standard identified in the accrediting body's survey including:-~~
 - ~~(iii) Complaints against the facility or other evidence that indicates non-compliance with state rules.~~
 - ~~(iv) Licensed health care facilities that are physically connected to or under the licensure of the accredited facility:-~~
 - ~~(v)i) [F]facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved[-],~~
 - ~~(vi)ii) [A]any facility or agency that does not have a current, valid accreditation certificate[-], or~~
 - ~~(vii)iii) [E]construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.~~

~~(5) [Validation Inspections.-]The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state [licensure]licensing requirements. If a validation survey discloses a failure to comply with the standards for [licensure]licensing, the provisions relating to regular annual inspection shall apply.~~

~~(6) [Validation Inspections.-]The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state [licensure]licensing requirements. If a validation survey discloses a failure to comply with the standards for [licensure]licensing, the provisions relating to regular annual inspection shall apply.~~

~~(7) [Validation Inspections.-]The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state [licensure]licensing requirements. If a validation survey discloses a failure to comply with the standards for [licensure]licensing, the provisions relating to regular annual inspection shall apply.~~

~~(8) [Validation Inspections.-]The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state [licensure]licensing requirements. If a validation survey discloses a failure to comply with the standards for [licensure]licensing, the provisions relating to regular annual inspection shall apply.~~

R432-3-4. Statement of Findings.

(1) ~~The Department or its designee shall inspect each facility or agency~~[Each facility may be inspected by the Department or its designee,] at least once during each year that a license has been granted, to determine compliance with standards and the applicable rules and regulations.

(2) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the the[se] rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of

Findings to the licensee or his designee within the following timeframe.

(a) ~~[A]~~Statements for Class I and III violations ~~[shall be]~~are served immediately.

(b) ~~[A]~~Statements for Class II violations ~~[shall be]~~are served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency[-] or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an ~~[invalid]~~expired license.

~~(4) [A facility may be cited]The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.~~

~~(5) [Contents of the Statement.-]The Statement of Findings shall include:~~

- ~~(a) [F]the statute or rule violated[-];~~
- ~~(b) a description of the violation[-];~~
- ~~(c) the facts which constitute the violation[-]; and~~
- ~~(d) the classification of the violation.~~

R432-3-5. Plan of Correction.

(1) A health facility or agency shall[-] submit within 14 calendar days of ~~the~~receipt of a Statement of Findings~~[-submit]~~ a ~~[plan]~~Plan of Correction outlining the following:

- ~~(a) [H]how the required corrections shall be accomplished[-];~~
- ~~(b) [W]who is the responsible person to monitor the correction is accomplished; and~~
- ~~(c) [Identify]-the date the facility or agency will correct the violation[of correction].~~

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the ~~[p]~~Plan of ~~[c]~~Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. ~~[A revised plan of correction shall be submitted within 14 days of receipt of a request]~~If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the ~~[violation has been corrected before submission and approval of a Plan of Correction]~~facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a ~~[p]~~Plan of ~~[e]~~Correction as specified, the Department shall notify the facility or agency ~~[within ten working days of further agency enforcement action].~~

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) ~~[C]~~Corrective Action Required for Class I Violations:

~~—(a)—~~If a licensed or unlicensed health facility or agency is served with a Statement of Findings citing a Class I violation, the facility or agency shall correct the situation, condition, or practice constituting the Class I violation ~~[shall be abated or eliminated]~~ immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

~~(b)a~~ ~~[A]~~The Department shall conduct a follow-up inspection ~~[shall be conducted]~~ within 14 calendar days or within the agreed upon correction period to determine correction of Class I violations.

~~(c)b~~ ~~[F]~~Failure to correct Class I Violations:

~~—When—~~If a health facility or agency fails to correct a Class I violation ~~[s]~~ as outlined in the accepted Plan of Correction, the Department shall pursue sanctions or penalties ~~[shall be pursued]~~ through a formal adjudicative proceeding as outlined in Rule R432-30.

(8) ~~[C]~~Corrective Action Required for Class II Violations:

~~—(a)—~~A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department ~~[, but not to]~~ which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

~~(b)9~~ ~~[F]~~Failure to Correct Class II Violations

~~—(i)—~~The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency ~~[when]~~ if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

~~(ii)10~~ The Department shall determine which sanction to impose by considering the following:

~~(A)a~~ ~~[F]~~the gravity of the violation ~~[-];~~

~~(B)b~~ ~~[F]~~the effort exhibited by the licensee to correct violations ~~[-];~~

~~(C)c~~ ~~[P]~~previous facility or agency violations ~~[-];~~ and

~~(D)d~~ ~~[O]~~other relevant ~~[circumstances]~~ facts.

~~(9)11~~ ~~[F]~~Failure to Correct Class III Violations:

~~—(a)—~~The Department shall serve a ~~[A]~~ facility or agency ~~[served]~~ with a Statement of Findings for a Class III violation. A facility of agency cited for a Class III violation must ~~[shall be given 14 days to]~~ file a Request for Agency Action/License Application form and pay the required licensing fee within 14 days of the receipt of the Class III Statement of Findings.

~~(b)a~~ The Statement of Findings may include the names of individuals residing in the facility who require services outside the scope of the proposed ~~[licensure]~~ licensing category.

~~(c)b~~ The facility shall arrange for all individuals to be relocated if the facility is unable to meet the individuals' needs within the scope of the proposed license category. ~~[Identified individuals shall be immediately relocated to a facility capable of meeting their needs.]~~

(d) If the facility or facility fails to submit the ~~[r]~~Request for Agency Action/License Application as specified, the Department shall issue a written ~~[n]~~Notice of ~~[a]~~Agency ~~[a]~~Action ordering closure of the facility or agency.

(e) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility or agency under an emergency adjudicative proceeding, as outlined in Rule R432-30.

R432-3-6. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) ~~[D]~~denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, ~~[exhibits evidence of aiding, abetting or permitting the commission of any illegal act;]~~ or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state ~~[-];~~

(b) ~~[R]~~restriction or prohibition on ~~[new]~~admissions to a health facility or agency for:

(i) any Class I deficiency ~~[-];~~

(ii) Class II deficiencies ~~[which]~~ that indicate a pattern of ~~[poor]~~ care ~~[which has]~~ and have resulted in the substandard quality of care of patients ~~[-];~~

(iii) ~~[R]~~repeat Class I or II deficiencies ~~[which]~~ that demonstrate continuous noncompliance or chronic noncompliance with the rules ~~[-];~~ or

(iv) permitting, aiding, or abetting the commission of any illegal act in the ~~[health]~~ facility or agency ~~[-];~~

(c) ~~[D]~~distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of ~~[licensure]~~ licensing rules or illegal conduct permitted by the facility or agency and the ~~[agency]~~ Department action taken ~~[-];~~

(d) ~~[P]~~placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed ~~[-];~~

(e) ~~[A]~~assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility ~~[-]~~ or agency; or

~~(f)~~ during the correction period, placement of a temporary manager to ensure the health and safety of the patients.

(2) If the Department imposes a restriction or prohibition on ~~[new]~~admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee.

~~(a)~~ The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency.

~~(b)~~ The Department shall impose the restriction or prohibition if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on ~~[new]~~admissions within the previous 24 month period; or

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) ~~[the Department has notified the long-term care facility or agency that]~~ circumstances in the facility or agency indicate actual

harm, a pattern of harm, or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on new admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or agency to post a written notice on all public entry doors.

~~[(4) Local Agency Coordination. The above actions shall be coordinated with local health, long term care ombudsman, zoning, building, and fire officials.]~~

R432-3-7. Immediate Closure of Facility.

(1) ~~[Emergency Proceeding.]~~The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63-46b-20 shall be followed.

(3) ~~[Notice to Facility. The]~~If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall ~~[state]:~~

- (a) state the reasons the facility is ordered closed;
- (b) cite the statute or rule violated; and
- (c) advise as to the commencement of a formal adjudicative proceeding in accordance with ~~[other provisions of]~~ this rule.

(4) ~~[Failure to Comply.]~~The Department may, ~~[upon the advice of the attorney general,]~~ maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order ~~[S]~~ as provided in section 26-21-15.

(5) ~~[Patient Relocation.]~~The Department ~~[, if requested,]~~ may assist in relocating patients or residents to another licensed facility or agency.

(6) ~~[Lesser Sanctions.]~~The Department may pursue other lesser sanctions in lieu of the closure order.

(7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-8. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility ~~[license]~~ or agency licensing category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the [s]Statement of [f]Findings two prior violations and given the licensee or facility administrator a written warning notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

.....

KEY: health facilities

~~[May 7, 1998]~~1999

Notice of Continuation January 11, 1999

26-21-5

26-21-14

through

26-21-16



Human Resource Management,
Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22011

FILED: 04/30/1999, 10:48

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To add a definition for "Employee Personnel Files."

SUMMARY OF THE RULE OR CHANGE: The term "employee personnel files" is not defined either in the Utah Code or rule. This definition confines the official employee personnel file to those records required in Subsections R477-2-6(1) and R477-2-6(2) and closes a legal loophole for the state human resource management system.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 67-19-6(1)(d) and 67-19-8(5)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This amendment has no impact on the state budget for costs or savings. It is anticipated that this will save time for agency administrators in processing employee grievances but no value has been attributed to that time.

❖LOCAL GOVERNMENTS: No impact--this rule only affects agencies of the executive branch of state government.

❖OTHER PERSONS: No impact--this rule only affects agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only applies to employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect 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 an agency passes costs or saving on to businesses through fees. In this case, this would be a savings effect because this rule has the potential to save time and resources in the handling of employee grievances.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy 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 assignment 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) Employee Personnel Files: For purposes of Titles 67-18 and 67-19, the files maintained by DHRM and agencies as required by R477-2-6. This does not include employee information maintained by supervisors.

(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~~61) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

(~~61~~62) 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)63) 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)64) 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)65) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(65)66) Job Requirements: Skill requirements defined at the job level.

(66)67) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(67)68) Job Identification Number: A unique number assigned to a job by DHRM.

(68)69) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(69)70) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(70)71) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

(71)72) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward performance.

(72)73) Misfeasance: Performance of a lawful action in an illegal or improper manner.

(73)74) Nonfeasance: Omission or failure to do what ought to be done.

(74)75) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(75)76) 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)77) 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)78) 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)79) 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)80) 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)81) Position: An employee's unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(81)82) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(82)83) 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)84) 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)85) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from FTE reductions and agency base budget reduction.

(85)86) Promotion: A management initiated action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

(86)87) 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)88) 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)89) 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)90) 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~~91) 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~~92) 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~~93) 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~~94) Reprisal: An act of management retaliation taken against an employee.

(~~94~~95) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

(~~95~~96) 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~~97) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(~~97~~98) RIF'd Employee: An employee who is placed on the reappointment register as a result of a reduction in force.

(~~98~~99) 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~~100) Salary Range: The segment of an approved pay plan assigned to a job.

(~~100~~101) 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~~102) 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~~103) Sexual Harassment:

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

- (i) Level One: sex role stereotyping
- (ii) Level Two: targeted gender harassment/discrimination
- (iii) Level Three: targeted or individual harassment
- (iv) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

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

(~~103~~104) 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~~105) 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~~106) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

(~~106~~107) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, 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~~108) 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~~109) 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~~110) 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~~111) Voluntary Reassignment: Employee initiated movement from a position in one job to a position in another job having a lower maximum salary step.

(~~111~~112) 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~~113) 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*

~~December 16, 1998~~1999

Notice of Continuation July 1, 1997

67-19-6



Human Resource Management,
Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 22012
FILED: 04/30/1999, 10:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make
nonsubstantive changes in the various grievance procedures
for discrimination, define more precisely what is covered by
the Americans with Disabilities Act, define more precisely
what constitutes an employee personnel file and distinguish
records contained in that file, and add a section providing for
agency appointed members of the Quality Service Review
Panel.

SUMMARY OF THE RULE OR CHANGE: In Subsections R477-2-
4(4)(d) and R477-2-5(6)(a), additional wording clarifies the
extent of coverage of employees and applicants under the
Americans with Disabilities Act. Amendments to Section
R477-2-6 distinguish between employee records and the
employees files maintained by the Department of Human
Resource Management (DHRM) and the employing agency.
The change in Subsection R477-2-6(9) restricts when the
supervisor's notes and personal records are available for
legal scrutiny. These are important technical and legal
distinctions designed to close a newly discovered loophole in
these rules governing the maintenance of employee files. A
new Section R477-2-11 is added to implement the provisions
of Section 67-19-16.4.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS
RULE: Subsections 67-19-6(1)(d) and 67-19-8(5)

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: Amendments to this rule are for
clarification and require no additional activity by agencies to
implement and thus no cost impact.
LOCAL GOVERNMENTS: None--this rule only affects the
employees and agencies of the executive branch of state
government.
OTHER PERSONS: None--this rule only affects the employees
and agencies of the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule
only affects the employees and agencies of the executive
branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT
THE RULE MAY HAVE ON BUSINESSES: Rules published by
DHRM have no direct effect on businesses or any entity
outside state government. DHRM has authority to write rules
only to the extent allowed by the "Utah Personnel
Management Act," Title 67, Chapter 19. 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 an agency
passes costs or saving on to businesses through fees. This
rule change has no effect on agency budgets.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning
Coordinator

R477. Human Resource Management, Administration.
R477-2. Administration.

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R477-2-4. Fair Employment Practice.

All state personnel actions must provide equal employment
opportunity for all individuals.

(1) Employment actions including appointment, tenure or
term, condition or privilege of employment shall be based on the
ability to perform the essential duties, functions, and responsibilities
assigned to a particular position.

(2) Employment actions shall not be based on age, race, creed
or religion, color, disability, sex, national origin, ancestry, political
affiliation, military status or affiliation or any other non-job related
factor, nor shall any person be subjected to sexual harassment by a
state employee.

(3) Any employee who alleges that they have been
discriminated against, may submit a claim to the agency head.

(a) If the employee does not agree with the decision of the
agency head, the employee may file a complaint with the Utah
[Anti-Discrimination Division:]Anti-Discrimination and Labor
Division.

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

(4) Employees are protected from employment discrimination
under the following laws:

(a) The Age Discrimination in Employment Act of 1967, 29
USC 621, as implemented by 29 CFR 1625, July 1, 1994 edition as

amended. This act prohibits discrimination on the basis of age for individuals forty years and over.

(b) The Vocational Rehabilitation Act of 1973, 29 USC 701, as implemented by 34 CFR 361, 1994 edition as amended. This act prohibits discrimination on the basis of disability status.

(c) The Equal Pay Act of 1963, 29 USC 206(d), as implemented by 29 CFR 1620, July 1, 1994 edition. This act prohibits discrimination on the basis of sex.

(d) Title VII of the Civil Rights Act of 1964 as amended, 42 USC 2000e. This act prohibits discrimination on the basis of sex, race, color, national origin, religion, or disability.

(e) The Americans with Disabilities Act of 1990, 42 USC 12201. This act prohibits discrimination against qualified individuals with disabilities in recruitment, selection, benefits and all other aspects of employment. It is the policy of the state that:

(i) A qualified individual with a disability who seeks employment and satisfies the requisite skill, experience, education, and other job-related requirements of the employment position, and who, with or without reasonable accommodation, can perform the essential functions of such position, will not be discriminated against.

(ii) Employees with disabilities who are unable to perform essential job duties because of impairments will be provided reasonable accommodations to perform essential job duties.

(f) Uniformed Services Employment and Reemployment Act of 1994, 38 USC 4301. This act requires a state to reemploy eligible veterans who left state employment for military service and return to work within specified time periods defined by USERRA.

R477-2-5. Grievance Procedure for Discrimination.

The following rules outline the grievance procedure and the specific requirements of the major laws:

(1) Age Discrimination in Employment Act of 1967.

(a) Employees shall report the alleged discriminatory act within one of the following time periods:

(i) 180 days after the occurrence,

(ii) 300 days after the occurrence if the matter has been presented to an appropriate state agency for proceedings under an applicable state law, or

(iii) 30 days after the individual receives notice of termination of any state proceedings.

(b) As a prerequisite to bringing any action, the individual may notify the Equal Employment Opportunity Commission of the intent to sue at least 60 days before filing the action. The Equal Employment Opportunity Commission will represent the individual in the processing of actions.

(c) The Utah [~~Anti-Discrimination Division~~]Anti-Discrimination and Labor Division of the [~~Industrial~~]Labor Commission is authorized by the Equal Employment Opportunity Commission to act on charges of employment discrimination. Employees must file charges within thirty days following an act of discrimination.

(2) Section 503 of The Rehabilitation Act of 1973, as implemented by 34 CFR 361, 1993 edition, as amended.

(a) Employers with federal contracts or subcontracts greater than \$10,000.00 must implement affirmative action programs to accommodate individuals with disabilities.

(b) All of an employer's operations and facilities must comply with Section 503 as long as any of the operations or facilities are

included in federal contract work. Agencies that meet the conditions outlined shall implement affirmative action programs to accommodate individuals with disabilities, and for employing and advancing qualified individuals with disabilities.

(3) Section 504 of the Rehabilitation Act of 1973 as amended, prohibits discrimination under any program or activity that receives federal financial assistance.

(a) Section 504 incorporates the employment provisions of Title I of the Americans With Disabilities Act of 1990. However, Section 504 does not require affirmative action.

(b) Under the 1978 amendments to the Rehabilitation Act, the procedures for enforcing Section 504 are the same as for Title VII of the Civil Rights Act of 1964.

(c) An aggrieved individual may bypass the state's grievance mechanism and file an administrative complaint with the granting federal agency. If unsatisfied with the outcome of the state's grievance mechanism, an individual may also file an administrative complaint. A charge of discrimination should be filed within 180 days of the discriminatory event.

(d) Remedies for violations of this law include the cutoff of federal funding to the grant recipient.

(4) The Equal Pay Act of 1963- The enforcement provisions of the Fair Labor Standards Act apply for an equal pay claim. The following rules apply:

(a) Sex discrimination in the payment of unequal wage rates is a continuous violation, and employees have a right to sue each payday that the discrimination persists.

(b) Employees are not required to exhaust any administrative procedures prior to filing an action.

(c) Employees alleging an equal pay claim may file directly with the Equal Employment Opportunity Commission.

(d) Employees do not have the right to file a court action when the Equal Employment Opportunity Commission initiates a court proceeding on the employee's behalf to either enjoin an employer or to obtain recovery of an employee's unpaid wages.

(e) Employees must file suit within two years from the last date of harm, unless the employer committed a willful violation of the law, in which case, they have three years.

(5) Title VII of the Civil Rights Act of 1964, as amended.

(a) Prior to bringing a suit under Title VII, the Equal Employment Opportunity Commission must:

(i) Inform the agency of the alleged discrimination in employment;

(ii) Investigate the charge;

(iii) Determine that there is reasonable cause to believe the discrimination occurred;

(iv) Attempt to conciliate;

(v) Give notice to the alleged discriminator of termination of conciliation efforts.

(b) The Equal Employment Opportunity Commission is required by statute to allow an authorized state or local agency sixty days to act on a specific charge.

(c) The state agency must have the authority to grant or prohibit the discriminatory practices or to substitute civil proceedings.

(d) Within 180 days of filing a charge with the Equal Employment Opportunity Commission, employees may file a court action privately.

(6) Americans with Disabilities Act (ADA) of 1990 - Title II of the ADA and Department of Justice regulations provide that ~~["No qualified individual with a disability shall, by reason of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any entity]."~~

(a) Title I of the ADA and EEOC regulations apply to recruitment, selection, benefits and all other aspects of ~~the~~ employment ~~process, including the management of injured worker issues~~.

(b) Under this law, employees with disabilities who are otherwise qualified shall receive the following:

(i) Equal opportunities, not merely equal treatment, for qualified individuals with disabilities;

(ii) Ensured access to equal employment opportunities based on merit;

(iii) Environmental accommodations and the reasonable accommodation for essential functions of the job, unless it imposes an undue hardship.

(c) The ADA does not establish quotas, nor favor individuals with disabilities over those without disabilities.

(d) Title I of the ADA is enforced by the Equal Employment Opportunity Commission (EEOC) and Title II is enforced by the Department of Justice (DOJ), under the same procedures used to enforce Title VI and VII of the Civil Rights Act of 1964. The EEOC and DOJ receive and investigate charges of discrimination and through conciliation seek to resolve any discrimination found and obtain full relief for the affected individuals.

(e) If conciliation is unsuccessful, the EEOC may file a suit or issue a "right to sue" letter to the person who filed the charge.

(f) An aggrieved individual may bypass the state's grievance procedure and file directly with the appropriate federal agency, or with the Utah ~~Anti-Discrimination Division~~ Anti-Discrimination and Labor Division.

(g) The discrimination charge must be filed within 180 days of the discriminatory event.

(7) Uniformed Service Employment and Re-employment Act of 1994 (USERRA).

(a) State statutes of limitations shall not apply to any proceedings under USERRA.

(b) An action may be initiated only by a person claiming rights or benefits, not by an employer.

(c) The United States Department of Labor, Veterans Employment and Training Service is authorized to act on charges of employment discrimination under USERRA.

(i) Prior to filing an action with the Veterans Employment and Training Service, an individual shall exhaust state administrative procedures.

(ii) If unsatisfied with the outcome of the State's grievance mechanism, an individual may file an administrative complaint.

(d) A person who receives notice from the Veterans Employment and Training Service of an unsuccessful attempt to resolve a complaint may request that the complaint be referred to the Attorney General of the United States. The U.S. Attorney General is entitled to appear on behalf of, act as attorney for, and commence action for relief in an appropriate U.S. District Court.

(e) An individual may commence an action for relief if that person:

(i) has chosen not to file a complaint through the Veterans Employment and Training Service;

(ii) has chosen not to request that the complaint be referred to the U.S. Attorney General;

(iii) has been refused representation by the U.S. Attorney General.

R477-2-6. Records.

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

(a) Performance ratings;

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

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

(a) Applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by Immigration and Naturalization Service (INS) Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form, benefits notification forms, performance evaluation records, termination records.

(b) References to or copies of transcripts of academic, professional, or training certification or preparation.

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

(d) Leave and time records.

(e) Copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.

(3) Employees have the right to review their personnel ~~records~~ file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) Employees may correct, amend, or challenge any information in the DHRM computerized or agency personnel ~~record~~ file, through the following process:

(i) The employee shall request in writing that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee, shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter; the agency's response; and the DHRM Executive Director's decision.

(4) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel ~~record~~ file.

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

(5) Upon employee termination, DHRM and agencies shall retain computerized records [~~shall be retained~~] for thirty years. Agency hard copy records shall be retained by the agency for a minimum of two years, then transferred [~~for permanent storage~~] to the State Record Center by State Archives Division to be retained for 28 years.

(6) Information classified as private in both DHRM and agency personnel and payroll [~~records~~]files shall be available only to the following people:

- (a) the employee;
- (b) users authorized by law determined in writing by the DHRM Executive Director to have a legitimate "need-to-know";
- (c) individuals who have the employee's written consent. A record of persons reviewing personnel [~~records~~]files shall be maintained together with the reasons for access to the [~~records~~]files.

(7) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate:

- (a) the employee's name, except for undercover law enforcement personnel;
- (b) gross compensation;
- (c) salary range;
- (d) contract fees;
- (e) the nature of employer-paid benefits;
- (f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;
- (g) job title;
- (h) performance plan;
- (i) education and training background as it relates to qualifying the individual for the position;
- (j) previous work experience as it relates to qualifying the individual for the position;
- (k) date of first and last employment in state government;
- (l) the final disposition of any appeal action by the Career Service Review Board;
- (m) work location;
- (n) a work telephone number;
- (o) city and county of residence, excluding street address;
- (p) honors and awards as they relate to state government employment;
- (q) number of hours worked per pay period;
- (r) gender;
- (s) other records as approved by the State Records Committee.

(8) When an employee transfers from one state agency to another, the former agency shall transfer the employee's original file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

(9) The record the Department and agency hold including other private, protected or controlled records referenced in the agency personnel file shall be considered the official record during any disciplinary proceedings. An employee may request a copy of any documentary evidence used for disciplinary purposes [~~or~~] in any formal hearing regardless of the documents source, prior to such use. This shall not apply to documentary evidence used for rebuttal.

(10) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to the Government Records Access and Management Act, Section 63-2-101. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

(11) In compliance with the Government Records Access and Management Act, only information classified as "public" or "private" which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The agency human resource manager or authorized manager in DHRM shall make the determination.

(12) Employees may verbally request the release of information for personal use; or authorize in writing the release of their performance records for use by an outside agent based on a need to know authorization. "Private" data shall only be released, except to the employee, after a written request has been evaluated and approved.

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R477-2-11. Quality Service Award.

When requested by the Director, agencies shall assign employees to serve on the Utah Quality Award Evaluation Panel according to criteria established by section 67-19-16.4 and DHRM.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
[~~June 27, 1998~~]1999 **67-19-6**
Notice of Continuation July 1, 1997



Human Resource Management,
Administration
R477-4
Classification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 22013
FILED: 04/30/1999, 10:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To amend this rule to be consistent with changing business practices in classification.

SUMMARY OF THE RULE OR CHANGE: The new language reflects additional information required by the Department of Human Resource Management (DHRM) in the revised state classification system.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 67-19-6(1)(d) and 67-19-8(2)

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None--this is a minor administrative adjustment and imposes no cost on agencies.
- ❖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 the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees however, this rule change has no impact on agency budgets.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.
R477-4. Classification.

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R477-4-2. Job Description.

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

- (1) Job descriptions shall contain:
 - (a) Job title
 - (b) Distinguishing characteristics

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

([e]d) Statements of required knowledge, skills, and other requirements

.....

KEY: administrative procedure, grievances, job descriptions, position classifications

~~[July 2, 1996]~~1999

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.: 22014

FILED: 04/30/1999, 10:48

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make nonsubstantive changes in wording to coincide with improvements DHRM is making to the selection system, clarify the policy on rehiring former state employees, clarify policy on compensation for employees in longevity who are involuntarily reassigned, and amend state policy regarding employee rights in the underfilling of state positions.

SUMMARY OF THE RULE OR CHANGE: New language in Section R477-5-5 makes it clear that an employee in longevity who remains in longevity status after a reassignment will maintain his salary. Amended language in Section R477-5-8 clarifies policy on the hiring of former state employees on competing for a state position, annual leave accrual rates, reinstatement of sick leave balances and salary. Amended language in Section R477-5-18 removes the requirement for agencies to establish criteria for underfilling positions and eliminates time limits for underfill. Employee rights are strengthened by requiring management to end the underfill when the employee satisfactorily meets the job requirements for the next higher position.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d), and Section 67-19-16

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: The policy change on underfill has the potential to decrease the amount of time an employee can be kept in an underfill status. Cost savings which an agency may experience through the use of underfill may be reduced. It is impossible to determine how much this may be.

❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.

❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through 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 long employee will remain in an underfill status.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.

R477-5. Filling Positions.

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R477-5-5. Recruitment Within Agencies.

(1) Agencies shall provide information about internal job opportunities to their employees. Agencies shall develop a consistent, internal recruitment strategy for job families and shall communicate this strategy to their employees.

(a) For agency recruitments when Utah Skill Match is not used, ~~[notices]~~vacancies shall be announced for a minimum of 5

days within an agency, an organizational unit or work group. Each ~~[notice]~~vacancy announcement shall include an opening and closing date.

(b) When Utah Skill Match is used, agencies are required to provide their employees information about the Utah Skill Match system.

(c) Recruitment is not required for personnel actions outlined in R477-5-4.(1).

(d) Appointment of employees from the statewide reappointment register must comply with the order of selection specified in R477-5-4.

R477-5-6. Transfer and Voluntary Reassignment.

(1) The agency that receives a transfer or voluntary reassignment of an employee shall verify his career status and that the employee meets the job ~~[qualifications]~~requirements for the position.

(a) An employee with a disability who is otherwise qualified may be eligible for transfer or voluntary reassignment to a vacant position within the agency as a reasonable accommodation measure, unless it creates an undue hardship on the agency.

(2) Payroll actions involving transfer or voluntary reassignment shall only be allowed at the beginning of a payroll period.

(3) Agencies receiving a transfer or voluntary ~~[transfer]~~reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(4) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

R477-5-7. Involuntary Reassignment.

(1) Positions may be filled by involuntarily reassigning ~~[staff]~~an employee 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.

(a) The employee shall be placed on the appropriate longevity step if their salary exceeds the maximum of the new salary range.

(2) Involuntary reassignments which involve a change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond his current one way commute, unless:

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

(b) The agency 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.

R477-5-8. Rehire.

(1) ~~[F]~~A former career service employee~~[s]~~ may be eligible for rehire to any ~~[classification]~~career service position for which ~~[they are]~~he is qualified.

(a) A rehired employee must compete through the Utah Skill Match System~~[Rehired employees]~~ and must serve a new probationary period, as designated in the official job description.[

~~Rehired employees may also be required to undergo further examination.]~~

~~(i) The annual leave rate for an employee hired on or after July 1, 1995 shall be based on all State employment in which the employee was eligible to accrue leave.~~

~~(ii) An employee who is rehired within 12 months of separation to a position which receives sick leave benefits shall have his previously accrued sick leave credit reinstated.~~

~~(b) [Rehired former career service employees may be offered a salary equivalent to their previous career service pay rate. However, their salary may not be less than step one of the new pay range nor more than the maximum of the new pay range.] A Rehired employee may be offered any salary within the regular salary range for the position.~~

(2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.

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R477-5-11. Hiring Lists.

(1) The hiring list shall include the names of qualified and ~~[available]~~interested applicants who have successfully completed all applicable examination(s) and are eligible for appointment or conditional appointment.

(a) Hiring lists shall be constructed using Utah Skill Match or another competitive process approved by DHRM. All competitive processes shall be based on job-related criteria.

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

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

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

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

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

- (a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or
- (b) is the unremarried surviving spouse of any veteran.

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

- (a) Was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty.
- (b) Is the unremarried surviving spouse of any disabled veteran.

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

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

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

- (i) Meets job ~~[qualifications]~~requirements; and
- (ii) Previously attained the position level comparable to the vacancy.

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

(9) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(10) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

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R477-5-18. Underfill.

(1) Underfill shall only be used in circumstances that meet the following conditions:

(a) The position is in the same classification series, as reflected on the position management report. ~~[No position shall be underfilled for more than one year per range level in the series, unless the employee is on corrective action, does not meet the job requirements for the higher level due to an absence for military service covered under USERRA, or as otherwise stipulated in the job description.]~~Positions shall be underfilled only until the employee satisfactorily meets the job requirements of the next higher level position as determined by management

(b) There must be discernible and documented differences in job tasks, duties, responsibilities, qualifications, knowledge, skills and abilities between levels in career ladders. [

~~(c) Agencies utilizing underfill must write guidelines and rules informing supervisors of their responsibility to include:~~

- ~~(i) the purpose of underfill;~~
- ~~(ii) the expectations of the supervisor on how the employee can advance within the series;~~
- ~~(iii) the controls that ensure employees advance to their next level within the series on the position management report are in place;~~
- ~~(iv) employees who are not advanced are informed why and what they must do in the future to advance to the next level.]~~

KEY: employment, fair employment practices, hiring practices

~~[October 2, 1998]~~1999 67-19-6

Notice of Continuation July 1, 1997



Human Resource Management,
Administration

R477-6

Employee Status and Probation

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 22015
FILED: 04/30/1999, 10:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify a probationary employees status if he is transferred or reassigned while in a probationary status.

SUMMARY OF THE RULE OR CHANGE: Amended language in Section R477-6-2 stipulates that a probationary employee who is transferred, reassigned, or promoted to another position requiring substantially different duties, knowledge, skills, or abilities must serve the entire probationary period of the new position.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d), and Section 67-19-16

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No cost impact--this amendment clarifies the probationary status of an employee and will not require any action by the agency to implement.

❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.

❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. However, this rule change will have little if any cost impact on agencies.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

**R477. Human Resource Management, Administration.
R477-6. Employee Status and Probation.**

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R477-6-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, and responsibilities, skills and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) Employees shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) At the end of the probationary period, employees shall receive performance evaluations. Evaluations shall be entered into HRE as the performance evaluation which reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay or workers compensation leave.

(b) The probationary period may not be reduced after appointment.

(3) Employees in career service positions who work at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) Probationary periods may be interrupted by military service covered under USERRA.

(5) An employee serving probation in a competitive career service position ~~is eligible for~~ may be transferred, [or voluntarily]voluntarily [reassignment]reassigned, [and may]involuntarily reassigned or [be] promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

(6) A reemployed veteran shall be required to complete the remainder of the probationary period if it was not completed in his pre-service employment.

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KEY: employment, personnel management, state employees
~~[June 27, 1998]~~1999 **67-19-6**
Notice of Continuation July 1, 1997

❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE No.: 22016
FILED: 04/30/1999, 10:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify state policy on the salary of an employee in longevity status who is affected by a promotion, reclassification or merit increase; protect the state from fiscal liability when an employee is affected by adjustments as the new classification program is implemented; clarify the benefits which should be given to an employee in AB, AD, AR or AS status, and make nonsubstantive language changes.

SUMMARY OF THE RULE OR CHANGE: Amended language in Subsections R477-7-4(1), R477-7-4(3) and R477-7-4(6) differentiates between an employee in longevity status and one who is not and makes technical adjustments to bring the rule into compliance with Section 67-19-15.7 after changes by the Department of Human Resource Management (DHRM) to the classification system. Section R477-7-4(5) prohibits salary increases as a result of adjustments as the new classification system is implemented. These adjustments are for classification purposes and are not salary related. Amended language in Sections R477-7-8 and R477-7-9 provides the same benefits defined in these sections to all employees on these four schedules. This is necessary in order to avoid possible legal liability resulting from the providing of different benefits to employees who are classified the same.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d), and Sections 67-19-15.1 and 67-19-15.6

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No fiscal impact should result--these amendments are designed to protect the state from possible fiscal liability because of confusion, misinterpretation, or administrative action by DHRM.
❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. This rule change will not effect agency budgets.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy 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 merit[s] increases are authorized and funded by the legislature:

(a) Employees, who are not on a longevity step, 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] at the beginning of the first pay period of the new fiscal year.

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

(2) Highest Level Performer

(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10-1(2) shall receive, as determined by the agency head, either:

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

(b) Employees 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 one [~~to three~~] salary step[s] 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~~]two or more salary steps[~~or more~~] shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.

(i) Employees, with the exception of those in longevity, may not be placed higher than the highest salary step or lower than the beginning salary step in the new salary range.

(ii) ~~Employees [in longevity shall be governed by R477-7-4(4)(c)] who remain in longevity status after a promotion or reclassification shall retain their salary by being placed on the corresponding longevity step.~~

(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~~]. The employee shall be placed on the corresponding longevity step if their salary exceeds the maximum of the new salary range.

(4) Longevity

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

- (i) They have 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.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in a salary increase unless the employee is below the minimum step of the new range.

(6) Voluntary Reassignment

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

(b) Employees who voluntarily accept a position with a salary range maximum [~~four~~]two or more 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 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~~]which result from the elimination of 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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R477-7-6. Employee Benefits.

(1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.

(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.

(3) Employees must elect to enroll in the life, health and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. Agencies shall submit the enrollment forms to Group insurance within three days of the date entered on the enrollment card.

(4) Flex Benefits

(a) The annual open enrollment period will be held each November for the following FLEX plan year. Exceptions to this rule are as follows:

(i) New employees wishing to participate in the FLEX benefits program shall enroll within the first 60 days of their employment. Coverage becomes effective on their employment date.

(ii) Employees who have a change in family status, such as marriage, divorce, or birth of a child, may enroll or make changes within 60 days of such event. Proper documentation, such as marriage license, divorce decree, or birth certificate, plus a completed FLEX family status change form must be received by the PEHP FLEX Plan Department within 60 days of the change in family status.

(b) Employees must re-enroll each year to participate in the FLEX benefits program.

(c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.

(d) To be eligible for reimbursement, employees must submit eligible FLEX claims accompanied by documentation to the ~~[DHRM - Benefits]~~PEHP FLEX Office no later than the first Thursday of each pay period.

(e) The claim submission deadline for any plan year shall be 90 days following the end of the calendar year. To be eligible for reimbursement, the FLEX claim must be received at the PEHP FLEX Plan Department by close of business on the established plan year deadline.

(5) Employees working less than 40 hours per pay period are ineligible for benefits. Employees working 40 hours, except those identified in R477-5-12, or more per pay period shall be eligible for leave benefits on a pro-rated basis.

(6) Re-employed veterans under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

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R477-7-8. Employees on Schedule AB, AD, AR and AS.

(1) A career service exempt [E]employee[s] on schedule AB, AD, AR, and AS shall be provided the following benefits:

- (a) Severance pay as defined in R477-7-9;
- (b) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:
 - (i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;
 - (ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;
 - (iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

R477-7-9. Severance Benefit for Employees on Schedules AB, AD, ~~and~~ AR and AS.

(1) ~~A career service~~ [E]xempt employee[s] on schedule AB, AD, ~~and~~ AR and AS who ~~are~~ is involuntarily terminated from state service shall receive a severance benefit equal to one week of pay for each year of consecutive exempt service accrued after January 1, 1993.

(2) ~~A career service~~ [E]xempt employee[s] on schedule AB, AD, ~~and~~ AR and AS who voluntarily accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between ~~their~~ his current hourly rate of pay and ~~their~~ his new hourly rate multiplied by the number of accrued annual leave, converted sick leave and excess hours.

- (3) A severance benefit shall not be paid to employees:
 - (a) whose statutory term has expired without reappointment;
 - (b) who are retiring from state service or are voluntarily separating from the executive branch;
 - (c) who are eligible for retirement; or
 - (d) who are discharged for cause.

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KEY: salaries, employee benefit plans*, insurance, personnel management
[October 2, 1998]1999 **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.: 22017
FILED: 04/30/1999, 10:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify state leave policy in a variety of areas including holiday

leave, funeral leave, furlough, and Family and Medical Leave. Also, to provide additional leave accrual rates for employees with 21 or more years of state service and establish new state policy on dual employment within the state system.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-8-7(1) clarifies that an employee must be in a paid status the day before and after a holiday in order to receive the holiday leave for that day. This is an important clarification for employees on flexible schedules. Section R477-8-7(3) is amended to provide 7 hours of annual leave each pay period for employees with 21 or more years service with the state. This is consistent with the accrual rate given to private sector and government employees in the Wasatch Front market and with the majority of states. This change affects approximately 15% of the state workforce. Section R477-8-7(8) amends the language for funeral leave to provide 24 hours rather than 3 days. This is important clarifying language for employees on a flexible working schedule. Section R477-8-7(14) gives the authority for a furlough to the agency head rather than the Department of Human Resource Management (DHRM). Amended language in Section R477-8-8 allows for the donation of excess hours to a leave bank and gives more flexibility to agencies to manage this beneficial program for state employees. Technical amendments in Section R477-8-9 brings state policy in compliance with the Family and Medical Leave Act. Section R477-8-10 is expanded to implement a new policy addressing overtime and benefits complications for employees who have more than one position in state government. The policy is very specific about employee and agency responsibility in order to avoid difficulty with the Fair Labor Standards Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: It is not anticipated that amendments to this section will have a discernible negative impact on agency budgets. The increase in leave accrual for senior employees and the amendments to the leave bank rule may create some indirect cost.
❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.
❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency

passes costs or saving on to businesses through fees. If there are costs associated with this rule, they will be minor and will not affect agency budgets.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy 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]the 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]the 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]through twenty years -- six hours per pay period.

(iv) Beginning of the twenty first year or more - seven hours per pay period.

(b) The accrual rate for employees hired on or after July 1, 1995 shall be based on all State employment in which the employee was eligible to accrue leave.

(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) Employees retiring from state service shall have the following options with their accrued unused sick leave.

(i) 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.

(iv) The purchase of health and life insurance coverage for a spouse until the spouse is eligible for medicare.

(v) The purchase of low option medicare supplement for the employee.

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

(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~~ twenty four hours 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 agency head~~[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.

R477-8-8. Leave Bank.

With the approval of the agency director, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours and converted sick leave hours may be donated to a leave bank.~~[-This does not include annual leave that would normally be lost at the end of the calendar year unless it is possible for the donating employee to take the annual leave before the calendar year end-]~~

(a) Employees shall not receive donated leave until they use all of their individually accrued leave.

(b) Only employees of agencies with approved leave bank programs may donate annual leave, excess hours and converted sick leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(c) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

R477-8-9. Family and Medical Leave.

(1) This rule conforms with the federal Family and Medical Leave Act, 29 USC 2601. Employees eligible under this rule shall continue to receive medical insurance benefits provided the employee was entitled to medical insurance benefits prior to the commencement of FMLA leave.

(a) Agency management shall authorize up to twelve weeks of leave each calendar year to employees for any of the following reasons:

(i) birth of a child,

(ii) adoption of a child,

(iii) placement of a foster child,

(iv) a serious health condition of the employee, or

(v) care of a spouse, dependent child or parent with a serious medical condition.

(2) To be eligible for the twelve weeks of family medical leave, the employee must be--

(a) Employed by the state for at least 12 months, and

(b) Employed by the state for a minimum of 1250 compensable work hours as determined under ~~[FLSA]~~FMLA during the 12-month period immediately preceding the commencement of leave. ~~[-Compensable work hours does not include any paid leave or time not spent actually performing work.]~~

(3) Employees (or an appropriate spokesperson) shall submit a leave request

(a) Thirty days in advance for foreseeable needs; or

(b) As soon as possible in emergencies.

(4) Agency Responsibility

(a) Agency management shall be responsible for:

(i) documenting employee leave requests which qualify as FMLA leave; and

(ii) designating any qualifying leave taken by employees as FMLA leave. All leave requests which qualify as FMLA leave shall be designated as such and shall be subject to all provisions of this rule. No other leave shall be granted until the employee has exhausted his 12-week entitlement under FMLA.; and

(iii) notifying employees in writing of the designation within two business days, or as soon as a determination can be made that the leave request qualifies as FMLA leave if the agency does not initially have sufficient information to make a determination.

(b) Written notification to employees shall include the following information:

(i) that the leave will be counted against the employee's annual FMLA entitlement;

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

(iii) a statement explaining that the employee will be required to exhaust unused annual, converted, and/or sick leave, before going into a LWOP status;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

(v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment;

(vi) the employee's rights to restoration to the same or an equivalent job upon return from leave; and

(vii) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

(c) Agencies may designate FMLA leave after the fact only:

(i) if the reason for leave was previously unknown, provided the reason for leave is made within two business days after the employee's return to work; or

(ii) the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.

(d) Agencies shall allow employees at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable. ~~[If the employee fails completely to provide medical certification requested by the agency, the leave shall not be considered FMLA leave.]~~

(e) Agencies shall inform Group Insurance that an employee is approved for FMLA leave.

(5) An employee shall be required to use accrued annual and converted sick leave and excess hours prior to the use of leave without pay for the family and medical leave period. Employees shall be required to use accrued sick leave only in situations considered eligible under R477-8-7(4)(c). Employees who take family and medical leave in a leave without pay status must comply with R477-8-7(10).

(a) Employees may choose to use compensatory time for an FMLA reason. Any period of leave paid from the employee's accrued compensatory time account may not be counted against the employee's FMLA leave entitlement.

(6) Employees shall be eligible to return to work under R477-8-7(10).

(a) If an employee fails to return to work after unpaid FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if he or she returns for at least 30 calendar days.

(b) Exceptions to this provision include:

(i) FLSA exempt and Schedule AB, AD and AR employees who have been denied restoration upon expiration of their leave time;

(ii) Employees whose circumstances change unexpectedly beyond their control during the leave period and he or she cannot return to work at the end of twelve weeks.

(7) For maternity and child placement leave, time must be taken in no less than 8 hour increments.

(8) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently unless the employee and employer mutually agree.

(9) Leave required for certified medical reasons may be taken intermittently.

(10) Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Accrued paid leave shall not be substituted for FMLA leave at the same time the employee is collecting a workers' compensation benefit.

(11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements.

R477-8-10. [Employment in More Than One State Job]Dual State Employment.

~~[Employees may, at agency discretion, have more than one state job as long as the total hours worked do not exceed 40 hours per week.]An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.~~

1. An employee in a dual employment status, regardless of the schedule of any of the secondary position(s) the employee may be in, shall be coded as schedule TL.

2. An employee may work in up to 4 different positions in state government.

3. An employee's benefits status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

4. An employee's FLSA status (exempt or non-exempt) for any secondary position(s) shall be the same as the primary position.

5. Leave accrual shall be based on all hours worked in all positions, and may not exceed the maximum amount allowed in the primary position.

6. As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

7. As a condition of dual employment, the Overtime/Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

8. Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

9. The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

10. Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in R477-9-2(1).

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KEY: compensatory time, disability insurance, leave, vacations
[December 16, 1998]1999 67-19-6
Notice of Continuation July 1, 1997



**Human Resource Management,
Administration
R477-9
Employee Conduct**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 22018
FILED: 04/30/1999, 10:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To create a distinction between outside employment and conflict of interest.

SUMMARY OF THE RULE OR CHANGE: Section R477-9-2 is being split into two sections: Section R477-9-2, "Outside

Employment," and Section R477-9-3, "Conflict of Interest." Language from Section R477-9-2 is moved to Section R477-9-3 and additional language is added to the new Section R477-9-3 strengthening the conflict of interest provisions of these rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d), and Section 67-19-19

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: There are no anticipated costs with these amendments. The purpose of the amendment is to distinguish between two concepts which are familiar to agencies and will not require additional action to implement.
 - ❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.
 - ❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. However, this rule change has no effect on agency budgets.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.

R477-9. Employee Conduct.

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R477-9-2. Outside ~~Activities;~~ Employment.

(1) State employment shall be the principal vocation for full-time employees governed by these rules. An employee may engage in outside employment~~[, receive honoraria or paid expenses]~~ under the following conditions:

- (a) Outside employment must not interfere with an employees' efficient performance in ~~[their]~~his state position.
- (b) Outside employment must not conflict with the interests of the agency or the State of Utah.
- (c) Outside employment must not give reasons for criticism or suspicion of conflicting interests or duties.
- (d) Employees shall notify agency management in writing and request approval to participate in outside employment if--
 - (i) Outside employment negatively affects performance in the primary employment, or
 - (ii) Outside employment has the potential or appears to conflict with Title 67, Chapter 16.
- (e) Agency management may deny employees permission to engage in outside employment or to receive payment if they determine the outside activity causes a real or potential conflict of interest.

- (i) Employees may grieve this decision.
- (ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

~~—(2) Employees shall not use their state position or any influence, power, authority or confidential information they receive in that position, or state time, equipment, property, or supplies for private gain.~~

~~—(3) Employees shall not receive outside compensation for performing state duties, except for the following:~~

- ~~—(a) Awards for meritorious public contribution.~~
- ~~—(b) Honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule.~~
- ~~—(c) Usual social amenities, ceremonial gifts, or insubstantial advertising gifts.~~

~~—(4) Employees shall declare a potential conflict of interest when they are required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.]~~

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

- (a) Outside activities must not interfere with our employees' efficient performance in his state position.
- (b) Outside activities must not conflict with the interests of the agency or the State of Utah.

(c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.

(2) An employee shall not use his state position or any influence, power, authority or confidential information he receives in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee shall not receive outside compensation for performing state duties, except for the following:

- (a) Awards for meritorious public contribution.
- (b) Honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule.
- (c) Usual social amenities, ceremonial gifts, or insubstantial advertising gifts.

(4) An employee shall declare a potential conflict of interest when he is required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477~~[-9-3;]-9-4. Political Activity.~~

State career service employees may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The following rules apply to career service employees in all salary ranges and positions.

(1) Any state career service employee elected to any partisan or full-time non-partisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. Employees shall not receive annual leave while serving in a political office.

(2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, state employees may voluntarily contribute to any party or any candidate.

(3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.

(4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

(5) This rule shall not apply to employees who are restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. To determine whether an employee shall adhere to the federal Hatch Act, employees may contact DHRM or the employing agency's Human Resource office for guidelines.

(6) Violations of law governing political activity shall be reported in writing to the Executive Director. The Executive Director, DHRM, shall investigate the validity of any allegation and assess the extent to which any activity was knowingly and willfully conducted in violation of law.

(a) Employees found in violation of these rules may be disciplined according to R477-11. Agency heads shall consult with the Executive Director, DHRM, before any action is taken.

R477[~~9-4~~]-9-5. Employee Indebtedness to the State.

(1) Employees indebted to the state because of an action or performance in their official duties may have a portion of their pay that exceeds the minimum federal wage withheld. Overtime pay shall not be withheld.

(a) The following three conditions must be met before withholding of pay may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the pay.

(iii) Employees must be notified of this rule which allows the state to withhold pay.

(b) Employees terminating from state service will have pay withheld from the last paycheck.

(c) Employees going on leave without pay for more than two pay periods may have pay withheld from their last paycheck.

(d) The state may withhold an employee's pay to satisfy the following specific obligations:

(i) Travel advances where travel and reimbursement for the travel has already occurred;

(ii) State American Express or other state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) Evidence that the employee negligently caused loss or damage of state property;

(iv) Payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) Misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) Overpayment of pay determined by evidence that an employee did not work the hours for which they received pay or was not eligible for the benefits received and paid for by the state.

(g) Excessive reimbursement of funds from flexible reimbursement accounts.

(h) Other obligations that satisfy the requirements of R477-9-4.(1) above.

(3) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477[~~9-5~~]-9-6. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-3.(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management

**[~~July 2, 1996~~]1999 67-19-6
Notice of Continuation July 1, 1997**



**Human Resource Management,
Administration
R477-10
Employment Development**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22019

FILED: 04/30/1999, 10:48

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule clarify the time requirements for performance appraisal and merit increases, remove a redundant reference to the Americans with Disabilities Act, and allow education assistance to reimburse employees who enroll in nontraditional educational programs such as the Western Governor's University.

SUMMARY OF THE RULE OR CHANGE: Amendments to Subsection R477-10-1(3) require that the performance appraisal be completed by the beginning of the first pay period of the new fiscal year instead of July first. Subsection R477-10-2(2), which requires managers to respond to an employee request for accommodation under the Americans with Disabilities Act, is removed. This provision is redundant because it is covered thoroughly in Subsection R477-2-5(6). The amendment to Section R477-10-5 broadens the requirement for successful completion of an educational program to allow for non-traditional approaches.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There is no anticipated cost with these amendments. They clarify the deadline for the posting of performance appraisals and allow management to provide educational assistance for non-traditional education programs.

❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.

❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state

government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. However, this rule change has no cost impact on agency budgets.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.

R477-10. Employee Development.

R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-3. For this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 30 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 30 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	#	RATING	POINTS
1		Pass	2
		Fail	0
2		Exceptional	3
		Successful	2
		Unsuccessful	0
3		Exceptional	3
		Highly Successful	2.5
		Successful	2
		Unsuccessful	0
4		Exceptional	3
		Highly Successful	2.5
		Successful	2
		Marginal	1
		Unsuccessful	0

(2) In addition to the above ratings, agency management may establish a rating category for highest level performers under the following conditions:

(a) Each employee who receives this rating shall receive a performance rating of 4.

(b) Agencies shall devise and publish the criteria they will use to select the highest level performers by August 30 of each year. Selection criteria for non-supervisory employees shall be comparable to the Utah Code 67-19c-101(3)(c). Selection criteria for supervisory/management employees shall be comparable to "The Manager of the Year Award."

(3) Each state employee shall receive a performance evaluation effective ~~July 1~~ on or before the beginning of the first pay period of each fiscal year.

(a) Probationary employees shall receive a performance evaluation at the end of their probationary period and again ~~at July 1~~ prior to the beginning of the first pay period of the fiscal year.

(4) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(a) The evaluation form shall include a space for employees' comments. The employee shall check a space indicating either agreement or disagreement with the evaluation. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Actions.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetency, or inefficiency, agency management shall take appropriate, documented, and clearly labeled corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee to discover the reasons for poor performance and to develop an appropriate written corrective action plan. The employee shall sign the written corrective action plan to certify that he has reviewed it. Refusal to sign the corrective action shall constitute insubordination subject to discipline.

(a) Corrective actions shall include one or more of the following:

(i) Closer supervision

(ii) Training

(iii) Referral for personal counseling by an agency designee

- (iv) Voluntary or involuntary reassignment
- (v) Use of appropriate leave
- (vi) Career counseling and out-placement
- (vii) Period of constant review
- (viii) Opportunity for remediation
- (ix) Written warnings]

~~(2) During implementation of a formal corrective action plan, agency management shall, upon employee's request, evaluate and make reasonable accommodations for employees with disabilities, as defined by ADA, as necessary in order for the employee to perform the essential functions of the job, as long as it does not create an undue hardship on the operations of the agency.]~~

(3)2 The supervisor shall designate an appropriate corrective action period and shall provide frequent evaluation of the employee's progress.

(4)3 If, after reasonable effort, the corrective actions taken do not result in improved performance that is satisfactory, the employee shall be disciplined according to R477-11-1. The written record of the corrective action shall satisfy the requirement of Section 67-19-18(1).

(5)4 DHRM shall provide assistance to agency management upon request.

.....

R477-10-5. Education Assistance.

State agencies may assist employees in their educational goals by granting employees administrative leave to attend classes and/or a subsidy of educational expenses.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

- (a) The educational program will provide a benefit to the state.
- (b) The employee shall successfully complete the required course work ~~[with a passing grade]~~ or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee voluntarily terminates within 12 months of completing educational work.

(d) Education assistance shall not exceed \$2,500 per employee in any one fiscal year unless approved in advance by the agency head.

(2) Agency management shall be responsible for determining the taxable/non-taxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluation, employee productivity, training programs
[June 27, 1998]1999 **67-19-6**
Notice of Continuation July 1, 1997



Human Resource Management,
Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22020

FILED: 04/30/1999, 10:48

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment to this rule makes clear that all disciplinary actions must comply with the provisions of Title 67, Chapter 19a, Grievance and Appeals Procedures.

SUMMARY OF THE RULE OR CHANGE: One phrase is added to Subsection R477-11-1(2) requiring disciplinary actions to comply with Title 67, Chapter 19a.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d), and Section 67-19-18

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** This amendment merely makes explicit what has been implicit in agencies since the implementation of Title 67, Chapter 19 in 1979. The addition of the new language is in anticipation of possible legal challenges in the future and will require no new activity by agencies to implement and, thus, has no impact on state agency budgets.

❖**LOCAL GOVERNMENTS:** None--this rule only affects the employees and agencies of the executive branch of state government.

❖**OTHER PERSONS:** None--this rule only affects the employees and agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. However, this rule change has no effect on agency budgets.

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.

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THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.

R477-11. Discipline.

R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following reasons:

- (a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards and workplace policies;
- (b) work performance that is inefficient or incompetent;
- (c) failure to maintain skills and adequate performance levels;
- (d) insubordination or disloyalty to the orders of a superior;
- (e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;
- (f) any incident involving intimidation, physical harm or threats of physical harm against co-workers, management, or the public;
- (g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. In all such cases, except as provided under Subsection 67-19-18(4), the disciplinary process shall include all of the following:

- (a) The agency representative notifies the employee in writing of the proposed discipline and the reasons.
- (b) The employee must reply within five working days in order to have the agency representative consider the reply before discipline is imposed.
- (c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any non-career service employee not subject to the same procedural rights, by imposing one or more of the following:

- (a) Written reprimand
- (b) Suspension without pay up to 30 calendar days per incident requiring discipline
- (c) Demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one class to a position in another class having a lower entrance salary if the duties of the position have been reduced for disciplinary reasons.

(ii) A demotion within the employee's current pay range may be accomplished by lowering the employee's salary rate back on the range, as determined by the agency head or designee.

(d) Dismissal

(i) An agency head shall dismiss or demote a career service employee only in accordance with the provision of Subsection 67-19-18(5). See R477-11-2 of these rules.

(e) When deciding the specific type and severity of the discipline to administer to any employee, the agency representative may consider the following factors:

- (i) Consistent application of rules and standards
- (ii) Prior knowledge of rules and standards
- (iii) The severity of the infraction
- (iv) The repeated nature of violations
- (v) Prior disciplinary/corrective actions
- (vi) Previous oral warnings, written warnings and discussions
- (vii) The employee's past work record
- (viii) The effect on agency operations
- (ix) The potential of the violations for causing damage to persons or property.

(4) If an agency determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by 67-19-18(4), pending an investigation and determination of facts:

- (a) Paid administrative leave
- (b) Temporary reassignment to another position or work location at the same rate of pay

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

.....

KEY: discipline of employees, dismissal of employees, grievances, government hearings
[June 27, 1998]1999 **67-19-6**
Notice of Continuation July 1, 1997



Human Resource Management,
Administration
R477-12
Separations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 22021

FILED: 04/30/1999, 10:48

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To change the state policy on reductions in force by removing the requirement for furlough, clarifying the authority of the DHRM Executive Director to make the final determination on whether a reduction in force (RIF)'d employee meets qualifications for a job vacancy and providing for a RIF'd employee to be eligible for a part time position.

SUMMARY OF THE RULE OR CHANGE: Nonsubstantive language additions clarify the role of the Department of Human Resource Management (DHRM) in a reduction in force (RIF). Elimination of the furlough requirement is accomplished by striking Subsection R477-12-3(1)(e). Amendments to Subsections R477-12-3(7) and R477-12-3(9) provide authority for DHRM to have final determination of eligibility of a RIF'd employee to fill vacancies and for the appointment of a RIF'd employee to a part-time position.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 67-19-6(1)(d) and 67-19-16(6)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This is an internal administrative change dealing with the authority of DHRM and will have no discernible affect on agency budgets.

❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.

❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. However, this rule change has no discernible effect on agency budgets.

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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.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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

.....

R477-12-3. Reduction in Force.

Reductions in force shall be required ~~[by]~~when there are inadequate funds, or a change of workload, or lack of work. Reductions in force shall be governed by ~~[the]~~DHRM business practices, standards and 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 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~~ with the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) Employees, 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 half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. 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.]~~

(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF meets the job requirements for position vacancies.

(ii) A RIF'd employee shall remain on the state reappointment register for twelve months from the date of separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each department's 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]~~ career service 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 half time or greater 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
~~October 2, 1998~~1999 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.: 22022
FILED: 04/30/1999, 10:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To provide management with guidelines for the rehabilitation of employees who violate this rule and make nonsubstantive wording changes.

SUMMARY OF THE RULE OR CHANGE: Sections R477-14-2 and R477-14-3 are merged into a single Section R477-14-2, "Management Action." New language specifies that management shall take immediate action when they become aware of an employee violation of this rule. Management has the choice of discipline or may offer an opportunity for rehabilitation under strict guidelines defined in the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d), and Sections 67-19-33, 67-19-34, 67-19-35, 67-19-36, 67-19-37, 67-19-38, and 67-19-39

ANTICIPATED COST OR SAVINGS TO:

- ◆THE STATE BUDGET: This rule has the potential to impact agency budgets if the agency chooses to assist the employee with the costs of rehabilitation through agency employee assistance programs. Employee assistance programs are controlled at the agency level and are unique to each agency's needs. It is anticipated that annual costs to the state of employee assistance programs is less than \$50,000. This rule would be a small percentage of this cost.
 - ◆LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.
 - ◆OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. This rule change has the potential to increase agency costs, but this is dependent on the number of employees who are offered rehabilitation by management. We anticipate that this will be minimal.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy 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 Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:
 - (a) Provide a safe and productive work environment that is free from the 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 R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.

(3) 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~~ controlled substances;

(ii) ~~An~~ Results of a confirmation test for alcohol ~~test result~~ shows .08 percent body fluid content or more.

(iii) Management determines there is impairment, even when ~~an~~ the results of a confirmation test for 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 shall be conducted by the employing agency as authorized by the Executive Director in DHRM.

(a) Employees in safety sensitive positions whose confirmation test for 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 confirmation test for 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.

R477-14-2. ~~[Corrective Actions]~~ Management Action.

(1) Pursuant to R477-10, R477-11 and R477-14-2, ~~[S]~~supervisors and managers who receive notice of a workplace violation of these rules ~~[must]~~shall take immediate action~~—as provided in R477-10 and R477-11.~~]

~~(2) Supervisors and managers may refer employees convicted of a controlled substance use violation or found to be abusing alcohol to a rehabilitation center within 30 days after receiving notice of the occurrence.~~

~~(a) Agency management may require an employee referral to rehabilitation depending on the severity of his performance or the critical incident.~~

~~(b) An employee undergoing rehabilitation shall be granted sick leave, annual leave or leave without pay for inpatient treatment.~~

~~(c) Employees must sign a release to allow the transmittal of verbal or written progress reports between the state agency and the inpatient/outpatient treatment provider.~~

~~(d) All communication shall be classified as private in accordance with Title 63, Chapter 2.~~

~~(e) An employee may be required to continue outpatient treatment prescribed by a licensed practitioner on the employee's own time and expense.~~

~~(f) Upon successful completion of treatment, the employee shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.~~

R477-14-3. Disciplinary Actions.

~~(1) Employees who fail to complete the prescribed treatment without a valid reason may be placed under disciplinary action.~~

~~(2) Any employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action. See Section 67-19-33.~~

~~(3) Management shall take disciplinary action against employees who manufacture, dispense, possess, use or distribute controlled substances or use alcohol, per R477-11, under the following conditions:~~

~~(a) If the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.~~

~~(b) If the employee's action puts employees, clients, customers, patients or co-workers at physical risk.~~

~~(4) Upon review of the facts surrounding any violation, management may suspend or terminate the employee.~~

~~(5) Any employee who is convicted under a federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing or using a controlled substance for a violation occurring in the workplace shall notify the agency head of the conviction no later than five calendar days after the conviction.~~

~~(6) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:~~

~~(a) the judicial system;~~

~~(b) other sources;~~

~~(c) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.~~

~~(7) Policy outlined in R477-14 is a term and condition of employment with the State of Utah pursuant to R477-10-2 and R477-11.]~~

~~(2) Upon review of the facts surrounding any violation, management may suspend or terminate the employee.~~

~~(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action. See Section 67-19-33.~~

~~(4) Management may take disciplinary action against employees who manufacture, dispense, possess, use or distribute controlled substances or use alcohol, per R477-11, under the following conditions:~~

~~(a) If the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00.~~

(b) If the employee's action puts employees, clients, customers, patients or co-workers at physical risk,

(5) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be offered the option of participating in a rehabilitation program, as provided for in section 67-19-38.(3), in lieu of disciplinary action. This option is at agency discretion. If the employee accepts the offer tendered by management to participate in such a program in lieu of disciplinary action, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Title 63, Chapter 2.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.

(6) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(7) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(8) An employee who is convicted under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing or using a controlled substance for a violation occurring in the workplace shall notify the agency head of the conviction no later than 5 calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system,

(ii) other sources,

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14[-4]-3. Rule Distribution.

(1) The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.

R477-14[-5]-4. Policy Exceptions.

The Executive Director may authorize exceptions to the provisions of this rule consistent with R477-2-3(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees
[October 2, 1998]1999 **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.: 22023

FILED: 04/30/1999, 10:48

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To insert a correct reference to a rule in the text of this rule.

SUMMARY OF THE RULE OR CHANGE: Amended language in Section R477-15-5 corrects a reference from R477-16 to R477-15.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-6(1)(d)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--this amendment is for clarification purposes and requires no new action by agencies to implement.

❖LOCAL GOVERNMENTS: None--this rule only affects the employees and agencies of the executive branch of state government.

❖OTHER PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--this rule only affects the employees and agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. 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 an agency passes costs or saving on to businesses through fees. This rule change has no effect on agency budgets.

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 06/15/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/1999

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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

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R477-15-4. Complaint Procedure.

Individuals affected by sexual harassment are afforded avenues for filing complaints which are free from bias, collusion, intimidation or reprisal.

(1) Individuals who feel they are being subjected to sexual harassment should do the following:

- (a) continue to report to work,
- (b) verbalize disapproval of the action to the perpetrator and demand that it cease,
- (c) document the occurrence,
- (d) identify a witness.

(2) Employees are encouraged to use internal agency or DHRM complaint procedures. A complaint of sexual harassment may be submitted in accordance with an agency's approved complaint procedure, directly to DHRM or [~~Utah Anti-Discrimination Division (UADD)~~]the Anti-Discrimination and Labor Division (UALD).

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.

(c) Any supervisor who has knowledge of offensive harassment behavior of a sexual nature shall take immediate, appropriate action and document the actions.

(3) Any complaint of sexual harassment must be acted upon following receipt of the complaint.

(4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

R477-15-5. Investigative Procedure.

The investigative procedures established by agencies shall allow the complainant to request to file their complaint with an investigator of a specific gender and as required in R477-~~[16]~~15-4(1) and (2). Preliminary reviews and investigations must be

conducted in accordance with procedures issued by the Department of Human Resource Management.

(1) Results of Investigation

(a) If the investigation reveals that disciplinary action is warranted, the agency head shall take appropriate action as provided in R477-11.

(b) If an investigation reveals evidence of criminal conduct in sexual harassment allegations, the Executive Director of the agency or DHRM, may refer the matter to the Attorney General's Office or County Attorney as appropriate.

(c) If the investigation reveals the accusations are unfounded, this information shall be documented, the investigation terminated, and all parties involved notified. If the investigation results in findings of a malicious, frivolous, bad faith or false claim, the individual filing the claim shall be subject to corrective or disciplinary action.

(d) Investigations shall be conducted by qualified individuals selected from a DHRM-approved list.

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KEY: administrative procedures, hostile work environment*
[~~October 2, 1998~~1999 **67-19-6**
Notice of Continuation July 1, 1997



Insurance, Administration
R590-146
Medicare Supplement Insurance
Minimum Standards

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 21999
FILED: 04/28/1999, 11:19
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies. Changes made to the Medicare system by the federal government require that we make changes to this rule to keep in step.

SUMMARY OF THE RULE OR CHANGE: 1) The following words were added to the "Definitions" section of the rule: "bankruptcy," "continuous period of creditable coverage," "creditable coverage," "employee welfare benefit plan," "insolvency," "medicare+Choice plan," and "secretary." 2) There are grammatical changes, i.e., capitalization and spelling, plus changing "may not" to "shall not"; and in many cases changing "Section" to "Subsection." 3) Section R590-

146-9, "Standard Medicare Supplement Benefit Plans," contains two additional high deductible subsections, one for Plan "F" and another for Plan "J." 4) Allowing those under the age of 65 and eligible for Medicare Part B coverage to participate in Open Enrollment. 5) Add new Section entitled "Guaranteed Issue for Eligible Persons." 6) Section R590-146-8 includes changes required for a prospective payment system. 7) Section R590-146-17 includes an incorporation by reference phrase for the "Outline of Coverage" attachment. 8) Section R590-146-23 eliminates the "similar benefit" option.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-620

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Outline of Medicare Supplement Coverage, NAIC, 1998

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Filing fees collected by the department may increase as a result of Medicare supplement insurers filing the new "F" and/or "J" high deductible plans. Each filing costs \$20 and there are 74 insurers licensed to sell Medicare Supplement insurance. If all 74 insurers were to file both plans the department would receive an additional \$1,480 in filing fees which would go to the General Fund.

❖LOCAL GOVERNMENTS: This rule should not affect local government. The rule is regulated by a state government agency to which all fees are paid by its licensees.

❖OTHER PERSONS: The new Guaranteed Issue provision requires companies to issue policies to eligible individuals that they previously were not required to issue to. In addition, open enrollment is now being extended to Medicare recipients under 65 whereas in the past it applied only to those Medicare recipients over 65. Both of these provisions could increase administrative and claims costs to insurance companies. Those companies that decide to sell the new high deductible Plans "F" and "J" will have costs for printing new forms and will need to file the new forms and rates with the Insurance Department and pay a filing fee of \$20 per filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individual insurance companies selling Medicare supplement coverage will be required to extend coverage to a broader base of individuals than previously as a result of the new Guaranteed Issue provision and the change made to the open enrollment provision. Both of these provisions could increase administrative and claims costs to each company selling medicare supplement coverage. A company that decides to sell the new high deductible Plans "F" and "J" will have costs for printing new forms and will need to file the new forms and rates with the Insurance Department and pay a filing fee of \$20 per filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule are required by the federal government. As noted in this form, several of the changes will have a fiscal impact on some of our licensees and the Insurance Department. The cost to the individual consumer will depend on the impact

these changes will have on the consumer's insurer. What the exact costs will be is impossible to tell at this time. The only cost that is certain is the \$20 filing fee.

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 06/17/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/03/1999, 10:00 a.m., 3112 State Office Building, Salt Lake City, UT 84114.

THIS RULE MAY BECOME EFFECTIVE ON: 06/18/1999

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-146. Medicare Supplement Insurance Minimum Standards.

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R590-146-3. Applicability and Scope.

A. Except as otherwise specifically provided in Sections 7, 12, 13, 16 and 21, this rule shall apply to:

- (1) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this rule; and
- (2) all certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

B. This rule ~~may~~ shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination, of the labor organizations.

R590-146-4. Definitions.

For purposes of this rule:

A. "Applicant" means:

- (1) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits[?], and
- (2) in the case of a group Medicare supplement policy, the proposed ~~certificate holder~~ certificateholder.

[B]B. "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

[E]D. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

E. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

F.(1) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(a) a group health plan;

(b) health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act, Medicare;

(d) Title XIX of the Social Security Act, Medicaid, other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 United States Code (CHAMPUS);

(f) a medical care program of the Indian Health Service or of a tribal organization;

(g) a State health benefits risk pool;

(h) a health plan offered under chapter 89 of Title 5 United States Code, Federal Employees Health Benefits Program;

(i) a public health plan as defined in federal regulation; and

(j) a health benefit plan under Section 5(e) of the Peace Corps Act, 22 United States Code 2504(e).

(2) "Creditable coverage" shall not include one or more, or any combination of, the following:

(a) coverage only for accident or disability income insurance, or any combination thereof;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for on-site medical clinics; and

(h) other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(a) limited scope dental or vision benefits;

(b) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) such other similar, limited benefits as are specified in federal regulations.

(4) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

(a) coverage only for a specified disease or illness; and

(b) hospital indemnity or other fixed indemnity insurance.

(5) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(b) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(c) similar supplemental coverage provided to coverage under a group health plan.

G. "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002, Employee Retirement Income Security Act.

H. "Insolvency" means that:

(a) an insurer is unable to pay its debts or meet its obligations as they mature;

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(7)(c); or

(c) an insurer is determined to be hazardous under this title.

[I]D. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

[E]J. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

K. "Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in Section 1859 found in Title IV, Subtitle A, Chapter 1 of P.L. 105-33, and includes:

(1) coordinated care plans which provide health care services, including but not limited to health maintenance organization plans, with or without a point-of-service option, plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and

(3) Medicare+Choice private fee-for-service plans.

[F]J. "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract [~~health service insurance corporations~~]of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

[G]M. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

N. "Secretary" means the Secretary of the United States Department of Health and Human Services.

R590-146-5. Policy Definitions and Terms.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section.

A. "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and ~~may~~shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(1) The definition ~~may~~shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is

the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries [may]shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit period" or "Medicare benefit period" [may]shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" [may]shall not be defined more restrictively than as defined in the Medicare program.

D. "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

Expenses [may]shall not include:

- (1) home office and overhead costs;
- (2) advertising costs;
- (3) commissions and other acquisition costs;
- (4) taxes;
- (5) capital costs;
- (6) administrative costs; and
- (7) claims processing costs.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" [may]shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" [may]shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

R590-146-6. Policy Provisions.

A. Except for permitted preexisting condition clauses as described in Subsections 7A(1) and 8A(1) of this rule, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state [may]shall contain benefits which duplicate benefits provided by Medicare.

R590-146-7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to July 30, 1992.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate [may]shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate [may]shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate [may]shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost[=]sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy [may]shall not:

(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Subsection (5)(d), the issuer shall offer ~~[certificate holders]~~certificateholders an individual Medicare supplement policy. The issuer shall offer the ~~[certificate holder]~~certificateholder at least the following choices:

(i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection 8B of this rule.

(c) If membership in a group is terminated, the issuer shall:

(i) offer the ~~[certificate holder]~~certificateholder the conversion opportunities described in Subsection (b); or

(ii) at the option of the group policyholder, offer the ~~[certificate holder]~~certificateholder continuation of coverage under the group ~~[policy]~~.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy ~~[may]~~shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) ~~[coverage]~~Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) ~~[coverage]~~Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) ~~[upon]~~Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) ~~[coverage]~~Coverage under Medicare Part A for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part B;

(6) ~~[coverage]~~Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible, \$100;

(7) ~~[effective]~~Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

R590-146-8. Benefit Standards for Policies or Certificates Issued or Delivered on or After July 30, 1992.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 30, 1992. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state

as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate ~~[may]~~shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate ~~[may]~~shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate ~~[may]~~shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate ~~[may]~~shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer ~~[may]~~shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer ~~[may]~~shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection 8A(5)(e), the issuer shall offer ~~[certificate holders]~~certificateholders an individual Medicare supplement policy which, at the option of the ~~[certificate holder]~~certificateholder:

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this subsection.

(d) if an individual is a ~~[certificate holder]~~certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the ~~[certificate holder]~~certificateholder the conversion opportunity described in Subsection 8A(5)(c); or

(ii) at the option of the group policyholder, offer the ~~[certificate holder]~~certificateholder continuation of coverage under the group policy.

(e) if a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy ~~[may]~~shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced

while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or ~~certificate holder~~certificateholder for the period, not to exceed 24 months, in which the policyholder or ~~certificate holder~~certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or ~~certificate holder~~certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or ~~certificate holder~~certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or ~~certificate holder~~certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Reinstitution of coverages:

(i) ~~may~~shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or ~~certificate holder~~certificateholder as the premium classification terms that would have applied to the policyholder or ~~certificate holder~~certificateholder had the coverage not been suspended.

B. Standards for Basic, Core, Benefits Common to All Benefit Plans.

Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services under a prospective

payment system, the copayment amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this rule.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) 80% of the Medicare Part B Excess Charges: Coverage for 80% of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) 100% of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from Subsection (b) and patient education to address preventive health care measures.

(b) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(1) fecal occult blood test or digital rectal examination, or both;

(2) mammogram;

(3) dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(4) pure tone, air only, hearing screening test, administered or ordered by a physician;

(5) serum cholesterol screening, every five years;

(6) thyroid function test;

(7) diabetes screening.

(c) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster, every ten years.

(d) Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology, AMA CPT, codes, to a maximum of \$120 annually under this benefit. This benefit ~~may~~ shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility ~~may~~ shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided shall be primarily services which assist in activities of daily living.

(ii) The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits ~~may~~ shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) the actual charges for each visit up to a maximum reimbursement of \$40 per visit;

(III) \$1,600 per calendar year;

(IV) seven visits in any one week;

(V) care furnished on a visiting basis in the insured's home;

(VI) services provided by a care provider as defined in this section;

(VII) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) home care visits paid for by Medicare or other government programs; and

(ii) care provided by family members, unpaid volunteers or providers who are not care providers.

(11) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

R590-146-9. Standard Medicare Supplement Benefit Plans.

A. An issuer shall make available to each prospective policyholder and ~~certificate holder~~ certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8B of this rule.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in Subsection 8C(11) and in Section 10 of this rule.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "J" listed in this section and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 8B and 8C and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law. Make-up of benefit plans:

~~— E. Make-up of benefit plans.~~

] (1) Standardized Medicare supplement benefit plan "A" shall be limited to the basic, core, benefits common to all benefit plans, as defined in Subsection 8B of this rule.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible as defined in Subsection 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Subsections 8C(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit, as defined in ~~Section~~ Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary

emergency care in an foreign country and the at-home recovery benefit as defined in [Sections]Subsections 8C(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in [Section]Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in [Sections]Subsections 8C(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in [Section]Subsection 8B of this rule, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in [Sections]Subsections 8C(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8C(1), (2), (3), (5) and (8) respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be \$1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of \$10.

(8) Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in [Section]Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 80% of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in [Sections]Subsections 8C(1), (2), (4), (8) and (10) respectively.

~~(8)~~(9) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in [Section]Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in [Sections]Subsections 8C(1), (2), (6) and (8) respectively.

~~(9)~~(10) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core benefit as defined in [Section]Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in [Sections]Subsections 8C(1), (2), (5), (6), (8) and (10) respectively.

~~(10)~~(11) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in [Section]Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in [Sections]Subsections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively.

(12) Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Subsections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be \$1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of \$10.

R590-146-10. Medicare Select Policies and Certificates.

A.(1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act, OBRA, of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this rule.

D. A Medicare Select issuer ~~may~~shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available 24 hours per day and seven days per week.

(e) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subsection ~~may~~shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) the formal organizational structure;

(b) the written criteria for selection, retention and removal of network providers; and

(c) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F.(1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after 30 days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate ~~may~~shall not restrict payment for covered services provided by non-network providers if:

(1) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) it is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) other Medicare supplement policies or certificates offered by the issuer; and

(b) other Medicare Select policies or certificates.

(2) A description, including address, phone number and hours of operation, of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M.(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

R590-146-11. Open Enrollment.

A. An issuer ~~may~~ shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience,

receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six month period beginning with the first day of the first month in which an individual is ~~both 65 years of age or older and is~~ enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this section without regard to age.

B. Except as provided in Section ~~[22,]23~~, Subsection A ~~may~~ shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or ~~certificate holder~~ certificateholder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

R590-146-12. Guaranteed Issue for Eligible Persons.

A. Guaranteed Issue

(1) Eligible persons are those individuals described in subsection B who apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subsection B, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection C that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons

An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply: there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of section 1851(e)(4) of the federal Social Security Act, which consists of the following:

"Effective as of January 1, 2002, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period under Medicare and make a new election under this section if:

(i) the organization's or plan's certification, under this part, has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(ii) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security

Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area:

(iii) the individual demonstrates, in accordance with guidelines established by the Secretary, that:

(I) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) the organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iv) the individual meets such other exceptional conditions as the Secretary may provide."

(3) (a) The individual is enrolled with:

(i) an eligible organization under a contract under Section 1876, Medicare risk or cost;

(ii) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) an organization under an agreement under Section 1833(a)(1)(A), health care prepayment plan; or

(iv) an organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of Section 1851(e)(4) of the federal Social Security Act as delineated above in Section 12B(2).

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a)(i) of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) of other involuntary termination of coverage or enrollment under the policy;

(b) the issuer of the policy substantially violated a material provision of the policy; or

(c) the issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5)(a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876, Medicare risk or cost, any similar organization operating under demonstration project authority, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and

(b) The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment, during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act; or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare, enrolls in a Medicare+Choice plan under part C of Medicare, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

C. Products to Which Eligible Person are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsection 12B(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Subsection 12B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection C(1).

(3) Subsection 12B(6) shall include any Medicare supplement policy offered by any issuer.

D. Notification provisions

(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection 12A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

R590-146-13. Standards for Claims Payment.

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act, as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, OBRA, 1987, Pub. L. No. 100-203, by:

(1) accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) paying the participating physician or supplier directly;

(4) furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

R590-146-~~13~~14. Loss Ratio Standards and Refund or Credit of Premium.**A. Loss Ratio Standards.**

(1) A Medicare Supplement policy form or certificate form ~~may~~ shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and ~~certificate holders~~ certificateholders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(i) at least 75% of the aggregate amount of premiums earned in the case of group policies; or

(ii) at least 65% of the aggregate amount of premiums earned in the case of individual policies; calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:

(a) ~~The~~the originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) ~~The~~the appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) when combined with actual experience beginning with the effective date of October 31, 1994 as set forth in Bulletin 94-8; and

(c) ~~The~~the appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

B. Refund or Credit Calculation

(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception, ratio 1, exceeds the adjusted experience ratio since inception, ratio 3, then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after the effective date of this rule. The first report shall be due by May 31, 1998.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date

of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of Premium Rates.

An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 30, 1992 in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(1)(a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings.

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of July 30, 1996 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

R590-146-[14]15. Filing and Approval of Policies and Certificates and Premium Rates.

A. An issuer ~~may~~shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer ~~may~~shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

C.(1) Except as provided in Paragraph (2) of this subsection, an issuer ~~may~~shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

- (a) the inclusion of new or innovative benefits;
- (b) the addition of either direct response or agent marketing methods;
- (c) the addition of either guaranteed issue or underwritten coverage;
- (d) the offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D.(1) Except as provided in Subsection (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this rule that has been approved by the commissioner. A policy form or certificate form ~~may~~shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subsection (a) ~~may~~shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this section.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Subsection (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner

in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

E.(1) Except as provided in Subsection (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule R590-146-[13]14.

(2) Forms assumed under an assumption reinsurance agreement ~~may~~shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

R590-146-[15]16. Permitted Compensation Arrangements.

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period and shall be provided for no fewer than five renewal years.

C. No issuer or other entity may provide compensation to its agents or other producers and no agent or producer may receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

R590-146-[16]17. Required Disclosure Provisions.**A. General Rules.**

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or

coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates ~~[may]~~shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or ~~[certificate holder]~~certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and ~~[acknowledgement]~~acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements[-]

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and ~~[certificate holders]~~certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(b) inform each policyholder or ~~[certificate holder]~~certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices ~~[may]~~shall not contain or be accompanied by any solicitation.

C. Outline of Coverage Requirements for Medicare Supplement Policies.

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective

applicant and, except for direct response policies, shall obtain an ~~[acknowledgement]~~acknowledgment of receipt of the outline from the applicant; and

(2) if an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12 point type. All plans A-J shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) ~~The [following items shall be included in the outline of coverage in the order prescribed in the Outline of Medicare Supplement Coverage Cover Page which is available at the Utah]~~Outline of Medicare Supplement Coverage, from the National Association of Insurance Commissioners, dated 1998, as incorporated by reference herein, is available for public inspection at the Insurance Department.

D. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq., disability income policy; or other policy identified in Subsection 3B of this rule, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

R590-146-[17]18. Requirements for Application Forms and Replacement Coverage.

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

TABLE I

(Statements)
(Boldface Type)

- (1) You do not need more than one Medicare supplement policy.
- (2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
- (3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
- (4) The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility.
- (5) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

Questions
(Boldface Type)

- To the best of your knowledge,
- (1) Do you have another Medicare supplement policy or certificate in force?
 - (a) If so, with which company?
 - (b) If so, do you intend to replace your current Medicare supplement policy with this policy (certificate)?
 - (2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?
 - (a) If so, with which company?
 - (b) What kind of policy?
 - (3) Are you covered for medical assistance through the state Medicaid program:
 - (a) As a Specified Low-Income Medicare Beneficiary (SLMB)?
 - (b) As a Qualified Medicare Beneficiary (QMB)?
 - (c) For other Medicaid medical benefits?

B. Agents shall list any other health insurance policies they have sold to the applicant.

- (1) List policies sold which are still in force.
- (2) List policies sold in the past five years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the

agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than twelve point type:

TABLE II

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE

(Boldface Type)
(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.
(Boldface Type)

According to (your application) (information you have furnished), you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage.

You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT (BROKER OR OTHER REPRESENTATIVE):

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason(s) (check one):

- Additional benefits.
- No change in benefits, but lower premiums.
- Fewer benefits and lower premiums.
- Other. (please specify)

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

.....
(Signature of Agent, Broker or Other Representative)

(Typed Name and Address of Issuer, Agent or Broker)

.....
(Applicant's Signature)

.....
(Date)

Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice, applicable to preexisting conditions, may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

R590-146-~~[18]~~19. Filing Requirements for Advertising.

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law.

R590-146-~~[19]~~20. Standards for Marketing.

A. An issuer, directly or through its producers, shall:

- (1) establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;
- (2) establish marketing procedures to assure excessive insurance is not sold or issued.
- (3) display prominently by type, stamp or other appropriate means, on the first page of the policy the following:
"Notice to buyer: This policy may not cover all of your medical expenses"
- (4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance; and
- (5) establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in Section 31A-23-302, the following acts and practices are prohibited:

- (1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.
- (2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
- (3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import ~~[may]~~shall not be used unless the policy is issued in compliance with this rule.

R590-146-~~[20]~~21. Appropriateness of Recommended Purchase and Excessive Insurance.

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

R590-146-~~[21]~~22. Reporting of Multiple Policies.

A. On or before March 1 of each year, an issuer shall report the following information on the applicable reporting form contained in Appendix B for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

- (1) policy and certificate number; and
- (2) date of issuance.

B. The items set forth above shall be grouped by individual policyholder.

R590-146-~~[22]~~23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates.

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate~~[for similar benefits]~~ to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy ~~[may]~~shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

R590-146-~~[23]~~24. Separability.

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances ~~[may]~~shall not be affected.

KEY: insurance

~~[July 19, 1996]~~1999

31A-22-620

Notice of Continuation May 7, 1997



Tax Commission, Motor Vehicle
R873-22M-20
 Aircraft Registration Pursuant to Utah
 Code Ann. Sections 2-1-7, 2-1-7.5, 2-1-
 7.6, and 2-1-7.7

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 21997
 FILED: 04/27/1999, 09:47
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 72-10-110 provides that aircraft registered for less than a full calendar year shall be charged a prorated registration fee.

SUMMARY OF THE RULE OR CHANGE: Amendment indicates that the prorated registration fee shall be calculated based on the number of months remaining in the registration period. For purposes of this calculation, the month during which the aircraft is originally registered in Utah shall be considered a full month.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 72-10-102, 72-10-109 through 72-10-112

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The amendment implements 1999 S.B. 139. Any costs or savings associated with a prorated registration were included in the fiscal note on the bill.
 ❖LOCAL GOVERNMENTS: The amendment implements 1999 S.B. 139. Any costs or savings associated with a prorated registration were included in the fiscal note on the bill.
 ❖OTHER PERSONS: The amendment implements 1999 S.B. 139. Any costs or savings associated with a prorated registration were included in the fiscal note on the bill.
 (DAR Note: S.B. 139 is found at 1999 Utah Laws 181, and is effective as of May 3, 1999.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs to comply. The statutory requirement of the prorated registration will benefit aircraft owners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Aircraft being registered in the state for a partial year when first purchased or brought into the state will pay based on the prorated rate.

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) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.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 06/14/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Pam Hendrickson, Commissioner

R873. Tax Commission, Motor Vehicle.

R873-22M. Motor Vehicle.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections ~~2-1-7, 2-1-7.5, 2-1-7.6, and 2-1-7.7~~72-10-102, 72-10-109 through 72-10-112.

A. "Aircraft" is as defined in Section ~~2-1-7~~72-10-102.

1. Aircraft includes fixed wing airplanes, balloons, airships, and any other contrivance subject to the registration requirements of the Federal Aviation Administration (FAA).

2. Aircraft does not include ultralight vehicles or hang gliders.

B. For purposes of this rule, all aircraft that meet requirements for registration by the FAA are subject to annual registration in this state. FAA registration documents must be made available for review at the time application for state registration is made.

C. The registration period is from January 1 through December 31. Newly purchased aircraft and aircraft moved to Utah from another state shall be registered immediately. A grace period to January 31 is allowed for renewal registrations.

D. A registration fee shall be collected at the time of registration. This fee shall be paid every time the registration changes and every time the registration is renewed.

E. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the registration fee shall be prorated based on the number of months remaining in the registration period.

1. For Purposes of determining the number of months remaining in the registration period, the month during which the aircraft is originally registered shall be considered a full month.

2. For example, if an aircraft is newly registered in Utah on July 31, 50 percent of the registration fee shall be paid at the time of original registration.

~~[E]~~F. Aircraft assessed as part of an airline by the Tax Commission are exempt from the registration requirements of Section ~~2-1-7~~72-10-109. Aircraft centrally assessed by the Tax Commission and not part of an airline remain subject to taxation as property and are subject to the registration requirements of Section ~~2-1-7~~72-10-109.

~~[F]~~G. Aircraft not legally registered are subject to seizure and impound under the provisions of Section ~~2-1-7.7~~72-10-112.

~~[G]~~H. The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.

~~[H]~~I. The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal. Decals must be applied and maintained in a manner that permits

identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

KEY: taxation, motor vehicles, aircraft, license plates
~~[October 14, 1998]~~1999 72-10-109 through 72-10-112
Notice of Continuation May 8, 1997 72-10-102



Tax Commission, Property Tax
R884-24P-64
Determination and Application of Taxable Value for Purposes of the Property Tax Exemption for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 21998
FILED: 04/27/1999, 09:47
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Sections 59-2-1104 and 59-2-1106 provide a property tax exemption for specified dollar levels of taxable value of real and personal property. Since vehicles subject to the age-based uniform fee are not assessed based on value, counties need to be given direction on how to calculate value of vehicles for purposes of these exemptions.

SUMMARY OF THE RULE OR CHANGE: Proposed rule indicates how the taxable value shall be calculated for vehicles subject to the age-based uniform fee. Taxable value is necessary because these property tax exemptions are applied against taxable value.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-2-1104 and 59-2-1106

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None--the proposed rule results from 1998 S.B. 50 and 1999 H.B. 275. Since the rule will lead to a reasonable approximation of taxable value, there are no fiscal impacts.

❖LOCAL GOVERNMENTS: None--the proposed rule results from 1998 S.B. 50 and 1999 H.B. 275. Since the rule will lead to a reasonable approximation of taxable value, there are no fiscal impacts.

❖OTHER PERSONS: None--the proposed rule results from 1998 S.B. 50 and 1999 H.B. 275. Since the rule will lead to a reasonable approximation of taxable value, there are no fiscal impacts.

(DAR Note: S.B. 50 is found at 1998 Utah Laws 322, and was effective January 1, 1999. H.B. 275 is found at 1999 Utah Laws 354, and will be effective January 1, 2000.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--the rule simply indicated a method for calculating taxable value.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--the rule gives direction for calculating the taxable value of age based fees vehicles for exemption purposes.

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) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.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 06/14/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/1999

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

A. For purposes of Sections 59-2-1104 and 59-2-1106, taxable value of vehicles subject to the Section 59-2-405.1 uniform fee shall be calculated by dividing the Section 59-2-405.1 uniform fee the vehicle is subject to by .015.

KEY: taxation, personal property, property tax, appraisal
~~[January 12,]~~1999 **Art. XIII, Sec 2**
Notice of Continuation May 8, 1997 **59-2-1104**
59-2-1106



NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (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.

Commerce, Real Estate **R162-101** Authority and Definitions

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 22000
FILED: 04/28/1999, 16:19
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

SUMMARY OF THE RULE OR CHANGE: Increases the education and experience required for new appraisers in conformity with federal regulations of the Appraiser Qualifications Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Less fee income with fewer new appraiser applications. Higher standards for licensure will increase the qualifications and competency of appraisers in the state and in turn reduce the number of complaints received by the division, saving investigation and enforcement resources.

❖LOCAL GOVERNMENTS: Local government does not regulate appraisers. Local government will be benefitted by receiving appraisal services by better qualified appraisers as a result of the amendments.

❖OTHER PERSONS: Public will be protected from economic loss due to the higher standard for appraiser licensing, resulting in more qualified appraisers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional fees will be incurred by applicants due to the increase in required education hours. Licensed appraisers will also be required to pay the Federal registry fee in addition to the licensing fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these rule changes is to implement the amendments made to the appraiser statutes during the 1999 legislative session and are aimed at increasing the competency and professionalism of the appraiser practitioners while bringing the Utah requirements into conformity with the federal regulations of the Appraiser Qualification Board which are followed by the vast majority of the other states and United States possessions and territories. There may be a small reduction to the state budget as a result of the more stringent education and experience requirements for licensure which will discourage marginal candidates from applying. However, the higher standards should reduce the amount of state assets currently required for enforcement and investigation, allowing these resources to be utilized elsewhere. There will be no effect upon local governments. Since the higher standards established by the statutory amendments and these rule changes will require additional education and experience, there will be an undetermined fiscal impact upon those seeking to enter this field in obtaining such education and apprentice experience. The financial impact upon those seeking licensure will be more than offset by the positive impact to the real estate industry and the general public of having a more competent and reliable pool of appraisers and

should lower the number of appraisers thus raising the average potential income of those becoming licensed.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The amendments made by H.B. 149 became effective May 3, 1999.

(DAR Note: H.B. 149 is found at 1999 Utah Laws 117, and is effective as of May 3, 1999. The amendments made by this bill affect Title 61, Chapter 2b.)

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) 530-6747, 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.

THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-101. Authority and Definitions.

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R162-101-2. Definitions.

~~[101.2.1 Licensee: one who has paid all the applicable license fees and has been granted the authority to act as a senior appraiser, a registered appraiser, a certified residential or a certified general appraiser.]~~
101.2.1 AQB: the Appraiser Qualifications Board of The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005.

101.2.2 Board: the Utah Appraiser Licensing and Certification Board.

101.2.3 Classification: the type of registration, license, or certification held by an appraiser.

101.2.4 Division: the Division of Real Estate of the Department of Commerce.

~~101.2.[2]5 Reinstatement: renewing a license, registration, or certification for an additional[licensing] period after its expiration date has passed but prior to six months after the expiration date.[~~

~~101.2.3 Reissuance: the renewal by the division of a license upon its expiration or the reinstatement of a license within six months of its expiration as provided in Section 61-2b-20.]~~

~~101.2.[4]6 Renewal: extending a license, registration, or certification for an additional [licensing] period upon its expiration.~~

~~101.2.7 Unclassified individual: An individual who does not hold any appraisal classification issued by the Division.~~

101.2.8 USPAP: The Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005.

**KEY: real estate appraisal, definitions
May 3, 1999 61-2b-20 to 61-2b-31
Notice of Continuation September 12, 1997**



Commerce, Real Estate
R162-102
Licensing Procedures

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 22001
FILED: 04/28/1999, 16:19
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

SUMMARY OF THE RULE OR CHANGE: Increases the education and experience required for new appraisers in conformity with federal regulations of the Appraiser Qualifications Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Less fee income with fewer new appraiser applications. Higher standards for licensure will increase the qualifications and competency of appraisers in the state and in turn reduce the number of complaints received by the division, saving investigation and enforcement resources.

❖LOCAL GOVERNMENTS: Local government does not regulate appraisers. Local government will be benefitted by receiving appraisal services by better qualified appraisers as a result of the amendments.

❖OTHER PERSONS: Public will be protected from economic loss due to the higher standard for appraiser licensing, resulting in more qualified appraisers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional fees will be incurred by applicants due to the increase in required education hours. Licensed appraisers will also be required to pay the Federal registry fee in addition to the licensing fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these rule changes is to implement the amendments made to the appraiser statutes during the 1999 legislative session and are aimed at increasing the competency and professionalism of the appraiser practitioners while bringing the Utah requirements into conformity with the federal regulations of the Appraiser Qualification Board which are followed by the vast majority of the other states and United States possessions and territories. There may be a small reduction to the state budget as a result of the more stringent education and experience requirements for licensure which will discourage marginal candidates from applying. However, the higher standards should reduce the amount of state assets currently required for enforcement and investigation, allowing these resources to be utilized elsewhere. There will be no effect upon local governments. Since the higher standards established by the statutory amendments and these rule changes will require additional education and experience, there will be an undetermined fiscal impact upon those seeking to enter this field in obtaining such education and apprentice experience. The financial impact upon those seeking licensure will be more than offset by the positive impact to the real estate industry and the general public of having a more competent and reliable pool of appraisers and should lower the number of appraisers thus raising the average potential income of those becoming licensed.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The amendments made by H.B. 149 became effective May 3, 1999.

(DAR Note: H.B. 149 is found at 1999 Utah Laws 117, and is effective as of May 3, 1999. The amendments made by this bill affect Title 61, Chapter 2b.)

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) 530-6747, 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.

THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-102. [Licensing]Application Procedures.

R162-102-1. [Licensing]Application.

102.1.1 Initial Review: An applicant for ~~[registration]~~licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the state of Utah~~[-and, for either Certified Residential or Certified General status, completion of the required experience].~~

102.1.1.1 The application may be reviewed by ~~[the]~~an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.

102.1.1.2 The candidate~~[-for either Certified Residential or Certified General status]~~ will provide evidence of meeting the experience requirement by completing the form required by the Division.

102.1.2 Exam Application

102.1.2.1 Upon determining the candidate has completed the education and experience requirements~~[-for either Certified Residential or Certified General status]~~, the Division will issue an examination application form to the candidate.

102.1.2.2 The candidate will make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.

102.1.3 [Registration/Certification]Final Application

~~[102.1.3.1 Registration Status - When the education of the candidate has been reviewed and approved, the candidate will be notified to complete the application form required by the Division.]~~

102.1.3.~~[2]~~1 ~~[Certified Residential and Certified General Status-]~~Within 90 days after successful completion of the exam, the appraiser applicant must return to the Division each of the following:

102.1.3.~~[2]~~1.1 A report from the testing service indicating successful completion of the exam.

102.1.3.~~[2]~~1.2 The license application form required by the Division. The application form shall include the ~~[licensee's]~~applicant's business and home addresses. A post office box without a street address is unacceptable as a business or home address. The ~~[licensee]~~applicant may designate either address to be used as a mailing address.

102.1.3.~~[2]~~1.3 The appropriate license or~~[state]~~ certification fee, which will include the fee for the federal registry.

R162-102-2. Status Change.

102.2.1 A registered, ~~[senior appraiser]~~licensed or certified appraiser must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate fees are received by the Division. Notice must be made in writing on the forms required by the Division.

102.2.1.1 Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

102.2.1.2 Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. ~~[The licensee may designate a]~~Any address ~~[to be used]~~may be designated as a mailing address.

102.2.2 ~~[Those appraisers licensed as either-]~~Registered or ~~[Senior]~~State-licensed Appraisers, upon meeting the appropriate requirements for certification and upon filing a completed~~[license]~~ application within six months from their last renewal, will be allowed to transfer to the categories of either Certified Residential or Certified General by paying only a transfer fee and the fee for the federal registry.

102.2.2.1 ~~[The original expiration date of the Registered or Senior Appraiser license will remain the same-]~~Transfer to a certified category will not change the individual's expiration date.

R162-102-3. Renewal.

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the registered, ~~[senior appraiser]~~licensed or certified appraiser at the mailing address shown on the Division records. The ~~[licensee]~~applicant for renewal must return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 ~~[The Certified Residential and Certified General]~~The registered, licensed and certified appraiser[s] must return proof of completion of ~~[20]~~28 hours of continuing education taken during the preceding two years.~~[After January 1, 1998, all Utah appraiser licensees must return proof of completion of 28 hours of continuing education taken during the preceding two years-]~~

102.3.1.1.1 Even though the appraiser may have changed classification, [E]very third time the appraiser renews, the appraiser will provide evidence of having completed, within the two years prior to the third renewal, a course in the Uniform Standards of Professional Appraisal Practice. This USPAP course will be a 15-hour course and will include passing of a final exam. [The USPAP course will also include an additional 1-1/2 hours of Utah state law-] This ~~[16-1/2]~~15 hours of credit may be used to meet part of the continuing education requirement for that renewal period. The appraiser must obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them.

102.3.1.1.2 Those State-Licensed Appraisers who were Senior Appraisers prior to May 3, 1999 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course.

102.3.1.1.3 Those appraisers who were State-Registered Appraisers prior to May 3, 2001 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the registration, license or certification shall expire.

102.3.2.1 A registration, license or certification may be renewed for a period of 30 days after the expiration date upon

payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 After this 30-day period and until six months after the expiration date, the registration, license or certification may be reinstated upon payment of a reinstatement fee in addition to the requirements of Section 102.3.1. It shall be grounds for disciplinary sanction if, after the ~~[license has expired]~~expiration date, the individual continues to perform work for which a registration, license or certification is required.

102.3.2.3 A person who does not renew ~~[his]~~a registration, license or certification within six months after the expiration date shall be reregistered, relicensed or recertified as prescribed for an original application. Applicants for a new license or certification will be required to complete a USPAP course and retake the examination for the classification for which they are applying.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser shall be extended a 15-day grace period to complete the application.

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]~~an appraiser in this state. An applicant must:

102.4.1.1 Submit an application in writing requesting ~~[registration]~~temporary licensure 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 or certification held, the date ~~[the current license]~~it 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.

R162-102-5. Reciprocity.

102.5.1 An individual who is licensed or certified as an appraiser by another state may be ~~[registered]~~licensed or certified in Utah by reciprocity on the following conditions:

102.5.1.1 The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of ~~[registration]~~licensure or certification for which he is applying in Utah;

102.5.1.2 The education must have included a course in the Uniform Standards of Professional Appraisal Practice;

102.5.1.3 The applicant must obtain and study the Utah Real Estate Appraiser Registration and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them;

102.5.1.4 ~~[If-]~~The applicant ~~[is applying for certification; he]~~must have passed an examination which has been approved by

the [Appraisal Qualifications Board of the Appraisal Foundation]AQB for the class of licensure or certification for which he is applying;

102.5.1.5 If the applicant resides outside of the state of Utah, he must 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;

102.5.1.6 The applicant must provide a complete licensing history sent directly to the Division by his home state and any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual[s appraisal license];

102.5.1.7 The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

102.5.1.8 The applicant must agree, as a condition of licensure or certification, that he will furnish to the Division upon demand all records requested by the Division relating to his appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

KEY: real estate appraisal, licensing
May 3, 1999

61-2b-23



Commerce, Real Estate
R162-103

Appraisal Education Requirements for
Prelicense and Continuing Education
Course, School and Instructor
Certification

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 22002
FILED: 04/28/1999, 16:19
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

SUMMARY OF THE RULE OR CHANGE: Increases the education and experience required for new appraisers in conformity with federal regulations of the Appraiser Qualifications Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Less fee income with fewer new appraiser applications. Higher standards for licensure will increase the qualifications and competency of appraisers in the state and in turn reduce the number of complaints received by the division, saving investigation and enforcement resources.

❖LOCAL GOVERNMENTS: Local government does not regulate appraisers. Local government will be benefitted by receiving appraisal services by better qualified appraisers as a result of the amendments.

❖OTHER PERSONS: Public will be protected from economic loss due to the higher standard for appraiser licensing, resulting in more qualified appraisers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional fees will be incurred by applicants due to the increase in required education hours. Licensed appraisers will also be required to pay the Federal registry fee in addition to the licensing fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT

THE RULE MAY HAVE ON BUSINESSES: The purpose of these rule changes is to implement the amendments made to the appraiser statutes during the 1999 legislative session and are aimed at increasing the competency and professionalism of the appraiser practitioners while bringing the Utah requirements into conformity with the federal regulations of the Appraiser Qualification Board which are followed by the vast majority of the other states and United States possessions and territories. There may be a small reduction to the state budget as a result of the more stringent education and experience requirements for licensure which will discourage marginal candidates from applying. However, the higher standards should reduce the amount of state assets currently required for enforcement and investigation, allowing these resources to be utilized elsewhere. There will be no effect upon local governments. Since the higher standards established by the statutory amendments and these rule changes will require additional education and experience, there will be an undetermined fiscal impact upon those seeking to enter this field in obtaining such education and apprentice experience. The financial impact upon those seeking licensure will be more than offset by the positive impact to the real estate industry and the general public of having a more competent and reliable pool of appraisers and should lower the number of appraisers thus raising the average potential income of those becoming licensed.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The amendments made by H.B. 149 became effective May 3, 1999.

(DAR Note: H.B. 149 is found at 1999 Utah Laws 117, and is effective as of May 3, 1999. The amendments made by this bill affect Title 61, Chapter 2b.)

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) 530-6747, 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.

THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-103. Appraisal Education Requirements[~~for Prelicensure and Continuing Education Course, School and Instructor Certification~~].

R162-103-1. Definitions.

103.1.1 For the purposes of this rule, "school" includes:

- (a) An accredited college, university, junior college or community college;
- (b) Any state or federal agency or commission;
- (c) A nationally or state recognized real estate appraisal or real estate related organization, society, institute, or association;
- (d) Any other school or organization as approved by the Board.

103.1.2 "School director" means an authorized individual in charge of the educational program at a school.

R162-103-2. [~~Prelicensure~~]School Certification.

103.2.1 Each school requesting certification shall make application for approval on the form prescribed by the Division, and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the school's eligibility for certification:

103.2.1.1 Name, phone number, and address of the school, school director and all owners of the school.

103.2.1.2 Attestation to upstanding moral character by individuals who are school directors or owners of the school, and whether any individual:

- (a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.
- (b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.
- (c) has any action now pending by any appraiser licensing or other agency.
- (d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.2.1.3 A description of the type of school and a description of the school's physical facilities. All courses shall be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

103.2.1.4 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; and the school's refund policy.

103.2.2 A public school may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or similar schedule. A quarter hour of college credit is the equivalent of 10 classroom hours, and a semester hour of college credit is the equivalent of 15 classroom hours.

103.2.3 Upon approval by the Board, a school will be issued certification. All certifications expire January 1. Conditions of certification include the following:

- (a) A school shall teach the approved course of study as outlined in the State Approved Course Outline;
- (b) A school shall require each student to attend the required number of hours and pass a final examination;
- (c) A school shall maintain a record of each student's attendance for a minimum of five years after his enrollment;
- (d) A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the appraisal profession. A school shall refrain from disparaging a competitor's services or methods of operation;
- (e) Within 15 calendar days after the occurrence of any material change in the school which could affect its approval, including the events listed in R162-103.2.1.2, the school shall give the Division written notice of that change; and
- (f) A school will not attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank.
- (g) A school shall provide to all students at the time of registration a copy of the qualifying questionnaire the student will be required by the Division to answer as part of the prelicensing or precertification examination.

R162-103-3. [~~Prelicensure~~]Course Certification.

103.3.1 Each school requesting approval of a course designed to meet the education requirements of [~~registration~~]licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:

- (a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;
- (b) Indication of any method of instruction other than lecture method including: a slide presentation, cassette, video tape, movie, home study, or other.

(c) A copy of the final examination of the course, if one is administered, and the answer key which is used to determine if the student has passed the course;

(d) An explanation of what the school procedure is if the student fails the final examination;

(e) A list of the titles, authors and publishers of all required textbooks;

(f) A list of the instructors and evidence of their certification by the Division, and a list of any guest lecturers to be used and evidence of their qualifications as an instructor for a specific course; and

(g) Days, times, and location of classes.

103.3.2 Upon approval by the Board, a course will be issued certification. All certifications expire January 1.

103.3.3 Each course of study will meet the minimum standards set forth in the State Approved Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics. Specific nonappraisal courses being used to satisfy the educational requirements shall have prior approval as to their applicability.

103.3.4 All courses of study will meet the minimum hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period. A 10-minute break will be given for each 50 minutes in class. Registration or certification credit will be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.

103.3.5 A public school or institution may use any faculty member to teach an approved course provided the individual demonstrates to the satisfaction of the Division and the Board academic training or appraisal experience qualifying him to teach the course. [

~~103.3.6 Methods of instruction other than lecture method, including a slide presentation, cassette, videotape, movie, or other method, may be used, providing that absent special approval from the Division:~~

~~103.3.6.1 These methods of instruction will be limited to a total of 50% of the class time;~~

~~103.3.6.2 These methods of instruction will have an accompanying workbook for the student to complete during the viewing time;~~

~~103.3.6.3 These methods of instruction will have a certified instructor available to answer questions after the presentation.]~~

103.3.[7]6 Distance [learning]education is defined as any educational process based on the geographical separation of [provider]instructor and student (e.g., CD ROM, On-line learning, correspondence courses, video conferencing, etc.). Distance [learning]education courses must provide interaction between the learner and instructor and must include testing. A distance [learning]education course may be acceptable to meet the classroom hour requirement or its equivalent providing each course meets the following conditions:

103.3.[7]6.1 The course (a) has been presented by an accredited college or university which offers [correspondence and distance learning]distance education programs in other disciplines[-] and where [A]accreditation [shall be]has been made by the Commission on Colleges or a regional accreditation association[-]; or (b) has received approval for college credit by the

American Council on Education's Program on Non-collegiate Sponsored Instruction, also known as PONSI; or (c) has been approved under the AQB Course Approval Program.

(a) The learner must successfully complete a written examination personally [administered]proctored by an official approved by the college or university[-]or by the presenting entity; and

(b) The course must meet[s] the requirements established by the [Appraiser Qualifications Board]AQB and [is]be equivalent to the minimum of 15 classroom hours,[-]or[

~~103.3.7.2 Distance learning courses offered by other than a college or university may be acceptable to meet the classroom hour requirement providing the course has received the American Council on Education's Program on Non-collegiate Sponsored Instruction, also known as PONSI, approval for college credit.~~

~~103.3.7.3 The content and length of the course must meet the requirements established by the Appraiser Qualifications Board.~~

~~103.3.7.4 The learner must successfully complete a written examination personally administered by an official approved by the course provider.]~~

103.3.[8]7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.

103.3.[9]8 All texts, workbooks, supplement pamphlets and any other materials shall be appropriate and current in their application to the required course outline.

103.3.[10]9 Within 15 calendar days after the occurrence of any material change in a course which could affect approval, the school shall give the Division written notice of the change.

R162-103-4. Education Credit for Noncertified [Prelicensing]Courses.

103.4.1 Education credit will be granted towards [registration]licensure or certification for an appraisal education course which has been taken and which has not been previously certified in Utah for prelicensing education credit, and has been provided by a school which meets the criteria as outlined in 103.1.

103.4.1.1 The course content shall have met the minimum standards set forth in the Utah State Approved Course Outline.

103.4.1.2 A course must be at least 15 hours in duration, including the examination. An hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period.

103.4.1.3 A final examination will be administered at the end of each course pertinent to that education offering.

103.4.2 Credit will not be granted for a course taken in which the applicant obtained credit from the course provider by challenge examination without having attended the course.

103.4.3 Credit will not be given for duplicate or highly comparable classes[-taken from different course providers]. Each course must represent a progression in which the appraiser's knowledge is increased.

103.4.4 [Credit will be given for appraisal classes taken only within ten years immediately preceding the registration or certification application.]There is no time limit regarding when education credit must have been obtained.

103.4.~~[4-1]~~⁵ Hourly credit for a course taken from a professional appraisal organization will be granted based upon the Division approved list which verifies hours for these courses.

103.4.6 Credit will only be granted for a course that has been successfully completed. Successful completion of a course means that the applicant has attended a minimum of 90% of the scheduled class hours, has completed all required exercises and assignments, and has achieved a passing score on a course final examination. The final examination shall not be an open book examination.

103.4.7 Submission for Education Approval.

103.4.7.1 Courses that have not been previously certified for prelicensing credit will be reviewed by the Education Review Committee. It is the responsibility of the applicant to establish that a particular education offering will qualify to meet the education requirement for registration or certification.

103.4.7.2 The applicant shall submit on a form provided by the Division a list of the courses that documents the course title, the name of the sponsoring organization, the number of classroom hours, and the date the course was completed.

103.4.7.3 The applicant will attest on a notarized affidavit that the courses have been completed as documented.

103.4.7.4 The applicant will support the claim for education credit if requested by the Division by providing proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

103.4.7.5 Applicants having appraisal education in categories other than those in the State Approved Course Outline may petition the Board on an individual basis for evaluation and approval of their education as being substantially equivalent to that required for registration or certification.

R162-103-5. [~~Preliminary~~]Instructor Application for Certification.

103.5.1 Each instructor requesting approval to be certified as an instructor to teach the education requirements of appraisal [~~registration~~]licensure or certification shall make application for approval on a form prescribed by the Division and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the instructor's eligibility for approval:

103.5.1.1 Attestation to upstanding moral character, including whether the individual:

(a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(c) has any action now pending by any appraiser licensing or other agency.

(d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.5.2 The instructor will demonstrate evidence of knowledge of the subject matter by the following:

103.5.2.1 A minimum of five years active experience in appraising, or

103.5.2.2 Evidence of having completed college or other appropriate courses specific to the topic he proposes to teach, or

103.5.2.3 Evidence of other qualifications of experience, education, or credentials which are acceptable to the Board; and

103.5.2.4 Evidence of having passed an examination designed to test knowledge of the subject matter he proposes to teach.

103.5.3 An applicant to teach the course on [~~the Uniform Standards of Professional Appraisal Practice~~]USPAP shall conform to all of the above criteria and in addition:

103.5.3.1 The applicant shall be a [~~registered~~]licensed or state-certified appraiser, and shall have seven years of experience as a full-time appraiser within the past 15 years, and

103.5.3.2 Shall be able to provide evidence of having completed a [~~Uniform Standards of Professional Appraisal Practice~~]USPAP course within the last two years, which course and accompanying exam have been approved by the [~~Utah Appraiser Registration and Certification~~] Board.

103.5.4 Upon approval by the Board, an applicant will be issued certification. All certifications expire January 1 of each even numbered year. Conditions of renewal of certification include providing proof of the following:

103.5.4.1 Must have taught at least 20 hours of in-class instruction in a certified course during the preceding two years; and

103.5.4.2 Must have attended a real estate instructor development workshop sponsored or approved by the Division during the preceding two years.

103.5.5 Within 15 calendar days after the occurrence of any of the events listed in Section 103.5.1, an applicant or instructor shall give written notice to the Division of that event.

R162-103-6. Education Review Committee.

103.6 A committee may be appointed by the Board to review submissions for education credit for [~~registration~~]license or certification applicants and also to review submissions for certification of appraiser courses and instructors.

103.6.1 The Education Review Committee shall:

103.6.1.1 Review all applications for adherence to the education credit required for [~~registration~~]licensure or certification and make recommendations to the Division and the Board for approval or disapproval of the education claimed.

103.6.1.2 Review all submissions requesting certification of appraiser courses and instructors for prelicensing education purposes and make recommendations to the Division and the Board for approval or disapproval.

103.6.2 The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and ad valorem appraisers.

103.6.2.1 The chairperson of the committee shall be appointed by the Board.

103.6.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

103.6.3 If the review of an application has been performed by the Education Review Committee, and the Board has denied the application based on insufficient education or an inability to meet the certification of education requirements, the applicant may

request that the Board review the issue again by making a request in writing to the Board within ~~ten~~^{thirty} days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-103-7. Continuing Education Course Certification.

103.7 ~~[To renew an appraiser license, the appraiser will complete the equivalent of 20 classroom hours of appraisal education during the two-year term preceding renewal. After January 1, 1998,]~~As a condition of renewal, all appraisers [licensees] will complete the equivalent of 28 classroom hours of appraisal education during the two-year term preceding renewal. The continuing education requirement is for the purpose of maintaining and increasing the appraiser's skill, knowledge and competency in real estate appraising.

103.7.1 Continuing education credit may be granted for courses that meet the following criteria:

(a) the course has been obtained from any of the course providers designated in 103.1.

(b) the course covers appraisal topics as suggested by the ~~[Appraisal Qualifications Board]~~AQB.

(c) the length of the educational offering is at least two classroom hours, each classroom hour is defined as 50 minutes out of each 60-minute segment, and the continuing education credit is limited to eight hours per day.

(d) the course meets the requirements for distance learning as outlined in R162-103.3.7.

103.7.2 Real estate appraisal related field trips are acceptable for continuing education credit; however, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.

103.7.3 Prelicensing education credit awarded to individuals seeking a different classification than that held, can also be used to satisfy a continuing education requirement.

103.7.4 Alternative Continuing Education Credit - continuing education credit may be granted for participation, other than as a student, in appraisal educational processes and programs.

103.7.~~[2]~~4.1 Credit may be granted on a case by case basis for teaching, program development, authorship of textbooks, or similar activities which are determined by the Board to be equivalent to obtaining continuing education.

103.7.~~[2]~~4.2 The Education Review Committee will review claims of equivalent education and also alternative continuing education proposed to be used for continuing education purposes.

103.7.4.3 The Board may award continuing education credit to members of the Education Review Committee, the Experience Review Committee, and the Technical Advisory Panel.

R162-103-8. Administrative Proceedings.

The Division may deny certification or renewal of certification to any course, school or instructor that does not meet the standards required by this chapter.

KEY: real estate appraisal, education

May 3, 1999

Notice of Continuation October 21, 1997

61-2b-8

◆ _____ ◆

Commerce, Real Estate **R162-104** Experience Requirement

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 22003

FILED: 04/28/1999, 16:19

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

SUMMARY OF THE RULE OR CHANGE: Increases the education and experience required for new appraisers in conformity with federal regulations of the Appraiser Qualifications Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Less fee income with fewer new appraiser applications. Higher standards for licensure will increase the qualifications and competency of appraisers in the state and in turn reduce the number of complaints received by the division, saving investigation and enforcement resources.

❖**LOCAL GOVERNMENTS:** Local government does not regulate appraisers. Local government will be benefitted by receiving appraisal services by better qualified appraisers as a result of the amendments.

❖**OTHER PERSONS:** Public will be protected from economic loss due to the higher standard for appraiser licensing, resulting in more qualified appraisers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional fees will be incurred by applicants due to the increase in required education hours. Licensed appraisers will also be required to pay the Federal registry fee in addition to the licensing fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these rule changes is to implement the amendments made to the appraiser statutes during the 1999 legislative session and are aimed at increasing the competency and professionalism of the appraiser practitioners while bringing the Utah requirements into conformity with the federal regulations of the Appraiser Qualification Board which are followed by the vast majority of the other states and United States possessions and territories. There may be a small reduction to the state budget as a result of the more stringent education and experience requirements for licensure which will discourage marginal candidates from applying. However, the higher standards should reduce the amount of state assets currently required for enforcement and investigation, allowing these resources to be utilized elsewhere. There will be no effect upon local governments. Since the higher standards established by the statutory amendments and these rule changes will require additional education and

experience, there will be an undetermined fiscal impact upon those seeking to enter this field in obtaining such education and apprentice experience. The financial impact upon those seeking licensure will be more than offset by the positive impact to the real estate industry and the general public of having a more competent and reliable pool of appraisers and should lower the number of appraisers thus raising the average potential income of those becoming licensed.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The amendments made by H.B. 149 became effective May 3, 1999.

(DAR Note: H.B. 149 is found at 1999 Utah Laws 117, and is effective as of May 3, 1999. The amendments made by this bill affect Title 61, Chapter 2b.)

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) 530-6747, 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.

THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-104. Experience Requirement.

R162-104-1. Measuring Experience.

104.1.1 Except for those applicants who qualify under Section 104.17, [A] appraisal experience shall be measured in points according to the Appraisal Experience Points Schedule in Section R162-104-18 of this rule and also in time accrued.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 24 months. [The equivalent of two years of experience, accrued in no fewer than 24 months from the date of registration, is required for certification. After January 1, 1998, e] Experience for the certified residential applicants shall have been accrued in no fewer than 30 months from the date of registration, and experience for the certified general applicants shall have been accrued in no fewer than 36 months from the date of registration or licensure.

104.1.1.2 Applicants for the state-licensed category shall submit proof of at least 400 points of experience. Applicants [shall submit proof of at least 400 points of experience on the form

required by the Division. After January 1, 1998, applicants] for certified residential shall submit proof of at least 500 points of experience, and applicants for certified general shall submit proof of at least 600 points of experience.

R162-104-2. Maximum Points Per Year.

104.2 All experience points cannot be earned in one 12-month period. For applicants for certification, A[a] maximum of [300 points will be credited for any one 12-month period. After January 1, 1998, a maximum of]375 points will be credited for any one 12-month period. For applicants for licensure, a maximum of 300 points will be credited for any one 12-month period.

R162-104-3. Time Allowed for Meeting Experience Requirement.

104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

.....

R162-104-5. Compliance with USPAP and Licensing Requirements, USPAP Limited Appraisals.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law or the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 No experience credit toward certification will be given for appraisals if the applicant was not registered or licensed as an appraiser in Utah, or in another state if registration or licensure was required in that state, at the time the appraisal was performed.

104.5.3 For the purposes of this rule, limited appraisals are defined as ~~[estimates]~~opinions of value performed under, and resulting from, invoking the departure provision of USPAP, but do not include mass appraisals. Limited appraisals shall be granted 50% of the credit awarded an appraisal which is not a limited appraisal. Limited appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which is not a limited appraisal. Not more than 25% of the total experience required for licensure or certification may be earned from limited appraisals.

R162-104-[6]7. State-Licensed and State-Certified [Residential] Applicants.

104.7.1 Except for those applicants who qualify under Section 104.17, applicants applying for licensure as State-Licensed Appraisers shall be awarded points from either the Residential Experience Points Schedule or the General Experience Points Schedule for their experience prior to licensure only if the experience claimed was gained in compliance with Section 105.3.

104.[6]7.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the points submitted from the Residential Experience Points Schedule. No more than 25% of the total points submitted may be from the General Experience Points Schedule.[

R162-104-7. State-Certified General Applicants.]

104.7.3 Applicants applying for certification as State-Certified General Appraisers may claim points for experience from either the Residential Experience Points Schedule or the General Experience Points Schedule, so long as at least 50% of the total points has been earned from the General Experience Points Schedule.

.....

R162-104-13. Experience Participation.

104.13 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards and all Advisory Opinions of USPAP, and preparation and development of the appraisal report in order to count the appraisal for experience credit. Experience credit will be granted to only one registered or licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-14. Unacceptable Experience.

104.14 An applicant will not receive points toward satisfying the experience requirement for [registration]licensure or certification for performing the following:

- (a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or
- (b) Personal property appraisals.

.....

R162-104-16. Experience Review Committee.

104.16 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.16.1 The Committee shall:

104.16.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.16.1.2 Correspond with applicants concerning submissions, if necessary; and

104.16.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.16.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and ad valorem appraisers.

104.16.2.1 The chairperson of the committee shall be appointed by the Board.

104.16.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.16.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within [ten]thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-17. Special Circumstances.

104.17 Applicants having experience in categories other than those shown on the Appraisal Experience Points Schedule, or applicants who believe the Experience Points Schedule does not adequately reflect their experience, or applicants who believe the Experience Points Schedule does not adequately reflect the complexity or time spent on an appraisal, may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may waive experience points, give an applicant credit for months of experience, or both.

104.17.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll may, as an alternative to using the Appraisal Experience Points Schedule, be awarded 200 points for every 12 months of service, provided that they have experience in at least three of the following categories and no more than one-third of their experience comes from any one of the following categories:

104.17.1.1 Property description/identification;

104.17.1.2 Highest and best use analysis;

104.17.1.3 Land value estimates;

104.17.1.4 Cost approach;

104.17.1.5 Sales comparison;

104.17.1.6 Income capitalization approach.

104.17.2 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the limitations in Section 105.3.

104.17.3 Fulltime investigators with the Division who perform appraisal investigations may be awarded 200 points for every 18 months of service. They are not subject to the limitations in Section 105.3.

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KEY: real estate appraisal, experience*

May 3, 1999

61-2b-1 through 61-2b-40

Notice of Continuation April 1, 1997



Commerce, Real Estate

R162-105

Scope of Authority

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 22004

FILED: 04/28/1999, 16:19

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

SUMMARY OF THE RULE OR CHANGE: Increases the education and experience required for new appraisers in conformity with federal regulations of the Appraiser Qualifications Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Less fee income with fewer new appraiser applications. Higher standards for licensure will increase the qualifications and competency of appraisers in the state and in turn reduce the number of complaints received by the division, saving investigation and enforcement resources.

❖**LOCAL GOVERNMENTS:** Local government does not regulate appraisers. Local government will be benefitted by receiving appraisal services by better qualified appraisers as a result of the amendments.

❖**OTHER PERSONS:** Public will be protected from economic loss due to the higher standard for appraiser licensing, resulting in more qualified appraisers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional fees will be incurred by applicants due to the increase in required education hours. Licensed appraisers will also be required to pay the Federal registry fee in addition to the licensing fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these rule changes is to implement the amendments made to the appraiser statutes during the 1999 legislative session and are aimed at increasing the competency and professionalism of the appraiser practitioners while bringing the Utah requirements into conformity with the federal regulations of the Appraiser Qualification Board which are followed by the vast majority of the other states and United States possessions and territories. There may be a small reduction to the state budget as a result of the more stringent education and experience requirements for licensure which will discourage marginal candidates from applying. However, the higher standards should reduce the amount of state assets currently required for enforcement and investigation, allowing these resources to be utilized elsewhere. There will be no effect upon local governments. Since the higher standards established by the statutory amendments and these rule changes will require additional education and experience, there will be an undetermined fiscal impact upon those seeking to enter this field in obtaining such education and apprentice experience. The financial impact upon those seeking licensure will be more than offset by the positive impact to the real estate industry and the general public of having a more competent and reliable pool of appraisers and should lower the number of appraisers thus raising the average potential income of those becoming licensed.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The amendments made by H.B. 149 became effective May 3, 1999.

(DAR Note: H.B. 149 is found at 1999 Utah Laws 117, and is effective as of May 3, 1999. The amendments made by this bill affect Title 61, Chapter 2b.)

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) 530-6747, 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.

THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-105. Scope of Authority.

R162-105-1. Scope of Authority.

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Unclassified individuals.

105.3.1 Unclassified individuals who have not yet accumulated 100 experience points and successfully completed the education required for licensure may perform the following duties under the direct supervision of a state-licensed or state-certified appraiser: typing an appraiser's research notes; typing an appraisal report; accompanying an appraiser on an inspection visit to a property; assisting an appraiser in measuring a property; taking photographs of specific properties selected by the appraiser; performing routine calculations; and obtaining copies of assessment records, deeds, maps, and data from real property data bases relating to properties selected by the appraiser.

105.3.1.1 Unclassified individuals who have not yet accumulated 100 experience points and successfully completed the education required for licensure may not participate in: selecting comparables for an appraisal assignment; making adjustments to comparables; drafting an appraisal report; and, except when working in the presence of a state-licensed or state-certified appraiser, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, or measuring a property.

105.3.2 Unclassified individuals who have accumulated 100 experience points and successfully completed at least 30 hours of the education required for licensure may act in the capacity of an appraisal "trainee" under the direct supervision of a state-licensed or state-certified appraiser. A "trainee" is permitted to have more than one supervising appraiser.

105.3.2.1 An appraiser "trainee" may, under the direct supervision of a state-licensed or state-certified appraiser, participate in selecting comparables for an appraisal assignment, participate in making adjustments to comparables, draft appraisal reports, and when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure a property.

105.3.3 All unclassified individuals are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.4 A classified appraiser who supervises an unclassified individual shall be responsible for the training and direct supervision of the unclassified individual and shall require the unclassified appraiser to maintain a log in form satisfactory to the Board which shall contain, at minimum, the following information for each appraisal:

105.3.4.1 Type of property;

105.3.4.2 Client name and address;

105.3.4.3 Address of appraised property;

105.3.4.4 Description of work performed;

105.3.4.5 Number of work hours;

105.3.4.6 Signature and state license/certification number of the supervising appraiser.

105.3.4.7 The unclassified individual shall maintain a separate appraisal log for each supervising appraiser.

KEY: real estate appraisal

May 3, 1999

61-2b

◆ ————— ◆

Commerce, Real Estate R162-106 Professional Conduct

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 22005

FILED: 04/28/1999, 16:19

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

SUMMARY OF THE RULE OR CHANGE: Increases the education and experience required for new appraisers in conformity with federal regulations of the Appraiser Qualifications Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Less fee income with fewer new appraiser applications. Higher standards for licensure will increase the qualifications and competency of appraisers in the state and in turn reduce the number of complaints received by the division, saving investigation and enforcement resources.

❖LOCAL GOVERNMENTS: Local government does not regulate appraisers. Local government will be benefitted by receiving appraisal services by better qualified appraisers as a result of the amendments.

❖OTHER PERSONS: Public will be protected from economic loss due to the higher standard for appraiser licensing, resulting in more qualified appraisers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional fees will be incurred by applicants due to the increase in required education hours. Licensed appraisers will also be required to pay the Federal registry fee in addition to the licensing fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these rule changes is to implement the amendments made to the appraiser statutes during the 1999 legislative session and are aimed at increasing the competency and professionalism of the appraiser practitioners while bringing the Utah requirements into conformity with the federal regulations of the Appraiser Qualification Board which are followed by the vast majority of the other states and United States possessions and territories. There may be a small reduction

to the state budget as a result of the more stringent education and experience requirements for licensure which will discourage marginal candidates from applying. However, the higher standards should reduce the amount of state assets currently required for enforcement and investigation, allowing these resources to be utilized elsewhere. There will be no effect upon local governments. Since the higher standards established by the statutory amendments and these rule changes will require additional education and experience, there will be an undetermined fiscal impact upon those seeking to enter this field in obtaining such education and apprentice experience. The financial impact upon those seeking licensure will be more than offset by the positive impact to the real estate industry and the general public of having a more competent and reliable pool of appraisers and should lower the number of appraisers thus raising the average potential income of those becoming licensed.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The amendments made by H.B. 149 became effective May 3, 1999.

(DAR Note: H.B. 149 is found at 1999 Utah Laws 117, and is effective as of May 3, 1999. The amendments made by this bill affect Title 61, Chapter 2b.)

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THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-106. Professional Conduct.

R162-106-1. Uniform Standards.

106.1. As required by the Appraisal Foundation in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), all licensees must comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) currently approved by the Board. Information on which version of USPAP is currently approved by the Board may be obtained from the division. All ~~Utah appraiser~~

~~licensees]~~persons registered, licensed or certified under this chapter must also observe the Advisory Opinions of USPAP. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005. ~~[Licensees or candidates for licensure]~~Registered, licensed and certified appraisers and candidates for registration, licensure or certification may obtain copies from the division.

R162-106-2. Use of Terms.

106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser," ~~["Senior Appraiser,"]~~State-Licensed Appraiser and "State-Registered Appraiser" shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number, license number or registration number must follow his name.

R162-106-3. Signatures, Size and Use of Seal.

106.3.1. State-Certified Appraiser's Seal.

106.3.1.1. When signing a certified appraisal report, State-Certified General Appraisers and State-Certified Residential Appraisers shall place on at least the certification page of the appraisal report, immediately below the appraiser's signature, the seal required by Section 61-2b-17(3)(e).

106.3.1.2. The seal to be affixed on reports prepared by state-certified appraisers shall contain the words "Utah State-Certified Residential Appraiser" or "Utah State-Certified General Appraiser" along with the appraiser's certificate number and expiration date. The zeros preceding the certificate number may be deleted. The size of the seal, rectangular in shape, shall be no larger than two and seven-eighths inches long and five-eighths of an inch high including the border. An example of the seal shall be made available on request at the Division offices.

106.3.1.3. The seal may be reproduced as a stamp with ink that can be copied, or may be inserted by computer in an appraisal report at the appropriate place.

106.3.2. State-Registered and State-Licensed Appraisers. ~~[A s]~~State-registered appraisers and State-Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.2.1. If a State-Registered Appraiser or a State-Licensed Appraiser prepares an appraisal report which exceeds the dollar amount permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations, the appraiser shall include after the appraiser's signature the words, "This appraisal does not qualify for federally related transactions."

106.3.2.1.1. This requirement does not apply if the State-Registered Appraiser or State-Licensed Appraiser has prepared the report under the direct supervision of a state-certified appraiser and the state-certified appraiser has signed the appraisal report taking responsibility for the report. [

~~106.3.3. Senior Appraisers. A Senior Appraiser is not required to place a seal on an appraisal report. If a Senior Appraiser places a seal on an appraisal report, the seal shall include the words; "This appraisal does not qualify for federally related transactions." A Senior Appraiser may not use a seal in any misleading manner or~~

in any manner likely to create the impression that the appraiser is a state-certified appraiser.]

106.3.[2]3. Signatures.

106.3.[2]3.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.[2]3.2. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

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R162-106-5. Failure to Respond to Investigation.

106.5. When the Division notifies an [licensee]appraiser or registered expert witness of a complaint, the [licensee]notified individual must respond to the complaint in writing within ten business days of the notice from the Division. Failure to respond within the required time period to a notice of complaint, a subpoena, or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the [licensee]appraiser or registered expert witness.

**KEY: real estate appraisal, conduct
May 3, 1999
Notice of Continuation April 1, 1997**

61-2b-27



Commerce, Real Estate
R162-107
Unprofessional Conduct

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 22006
FILED: 04/28/1999, 16:19
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

SUMMARY OF THE RULE OR CHANGE: Increases the education and experience required for new appraisers in conformity with federal regulations of the Appraiser Qualifications Board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Less fee income with fewer new appraiser applications. Higher standards for licensure will increase the qualifications and competency of appraisers in the state and in turn reduce the number of complaints

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COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these rule changes is to implement the amendments made to the appraiser statutes during the 1999 legislative session and are aimed at increasing the competency and professionalism of the appraiser practitioners while bringing the Utah requirements into conformity with the federal regulations of the Appraiser Qualification Board which are followed by the vast majority of the other states and United States possessions and territories. There may be a small reduction to the state budget as a result of the more stringent education and experience requirements for licensure which will discourage marginal candidates from applying. However, the higher standards should reduce the amount of state assets currently required for enforcement and investigation, allowing these resources to be utilized elsewhere. There will be no effect upon local governments. Since the higher standards established by the statutory amendments and these rule changes will require additional education and experience, there will be an undetermined fiscal impact upon those seeking to enter this field in obtaining such education and apprentice experience. The financial impact upon those seeking licensure will be more than offset by the positive impact to the real estate industry and the general public of having a more competent and reliable pool of appraisers and should lower the number of appraisers thus raising the average potential income of those becoming licensed.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The amendments made by H.B. 149 became effective May 3, 1999.

(DAR Note: H.B. 149 is found at 1999 Utah Laws 117, and is effective as of May 3, 1999. The amendments made by this bill affect Title 61, Chapter 2b.)

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THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-107. Unprofessional Conduct.

R162-107-1. Unprofessional Conduct.

107.1 Unprofessional conduct includes the following specific acts or omissions:

(a) Violating or disregarding a disciplinary order of the Utah Appraiser Registration and Certification Board or the division; and

(b) Signing an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property.

107.2 The Board may appoint members of the appraisal industry to serve as a Technical Advisory Panel to provide advice to the Division concerning technical appraisal issues and conduct constituting unprofessional conduct.

**KEY: real estate appraisal, conduct
May 3, 1999**

61-2b-8



Commerce, Real Estate
R162-109
Administrative Proceedings

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 22007
FILED: 04/28/1999, 16:19
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the amendments made by H.B. 149 concerning appraiser licensing.

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STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 61, Chapter 2b

ANTICIPATED COST OR SAVINGS TO:

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BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 05/03/1999

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

R162. Commerce, Real Estate.

R162-109. Administrative Proceedings.

R162-109-1. Formal Adjudicative Proceedings.

109.1. Any adjudicative proceeding as to the following matters shall be conducted on a formal basis:

109.1.1. the revocation, suspension, or placing on probation of an appraiser registration, license, certification, or temporary permit;

109.1.2. the revocation, suspension, or placing on probation of certification of appraisal courses, schools, or instructors;

109.1.3. the imposition of a fine or a remedial education requirement against ~~a registrant, certificate holder, or~~ the holder of a registration, license, certificate or temporary permit;

109.1.4. the imposition of a fine or a remedial education requirement against a certified appraisal school or instructor;

109.1.5. any proceedings conducted subsequent to the issuance of a cease and desist order or other emergency order.

R162-109-2. Informal Adjudicative Proceedings.

109.2.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

109.2.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Appraiser ~~Registration~~ Licensing and Certification Act or these rules.

109.2.3. A party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

109.2.4. All proceedings on original applications for licensure or certification or renewal applications for registration, licensure or certification as an appraiser, or for certification of appraisal courses, schools, or instructors, and all proceedings on applications for a temporary permit or registration as an expert witness will be conducted as informal adjudicative proceedings.

109.2.5. All application forms which shall be filled out and submitted to the Division for registration, licensure or certification as an appraiser, or for certification of courses, schools, or instructors, and all applications for a temporary permit shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46b-1, et seq.

109.2.5.1. Upon receipt of an application, the Division shall:

(a) issue and mail a registration, license, certification, or temporary permit, which shall be deemed notification that the application is granted;

(b) notify the applicant that the application is incomplete and that further information is needed;

(c) notify the applicant that a hearing shall be scheduled before the Utah Appraiser ~~Registration~~ Licensing and Certification Board for the purpose of determining the applicant's fitness for registration, licensure, or certification; or

(d) notify the applicant that the application is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

109.2.6. Other Requests for Agency Action

109.2.6.1. All other requests for agency action shall be in writing and signed by the requestor, and shall contain the following:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date of mailing of the request for agency action;

(d) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(e) a statement of the relief or action sought from the Division; and

(f) a statement of the facts and reasons forming the basis for relief or agency action.

109.2.6.2. Upon receipt of a request for agency action other than an application for registration, licensure or certification, the Division shall:

(a) notify the requestor in writing that the request is granted;

(b) notify the requestor that the request is incomplete and that further information is needed before the Division is able to make a determination on the request;

(c) notify the requestor that the Division does not have the legal authority or jurisdiction to grant the relief requested or the action sought; or

(d) notify the requestor that the request is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

109.2.6.3. A complaint against ~~a registrant, certificate holder,~~ an appraiser, a registered expert witness, or the holder of a temporary permit requesting that the Division commence an investigation or a disciplinary action is not a request for agency action.

R162-109-3. Hearings Not Required.

109.3. A hearing is not required and will not be held in the following informal adjudicative proceedings:

109.3.1. The issuance, renewal or ~~reissuance~~ reinstatement of an appraiser registration, license or certification;

109.3.2. The issuance or ~~reissuance~~ renewal of an appraisal course, school, or instructor certification;

109.3.3. The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division; or

109.3.4. The denial of [~~reissuance~~]~~renewal or reinstatement~~ of an appraiser registration, license or certification for failure to complete any continuing education required by Section 61-2b-40.

R162-109-4. Hearings Permitted.

109.4.1. In the following informal adjudicative proceedings, a hearing will be held only if requested in writing by a party within 30 days from the date a notice of agency action or the Division's response to a request for agency action is mailed:

109.4.1.1. The denial of an application for certification as an instructor on the grounds that his attestation to upstanding moral character is false;

109.4.1.2. The denial of an application for an initial appraiser [~~registration~~]license or certification due to insufficient education or experience, as determined by the appropriate review committee appointed by the Appraiser [~~Registration~~]Licensing and Certification Board; or

109.4.1.3 The denial of an application for a temporary permit.

109.4.2. A request by a party for a hearing shall include the grounds upon which relief is requested.

109.4.3. All hearings permitted by this rule will be before the Utah Appraiser [~~Registration~~]Licensing and Certification Board.

R162-109-5. Procedures for Hearings in Informal Adjudicative Proceedings.

109.5.1. Notice of hearing. Upon the scheduling of a license application hearing by the Division or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of the date, time, and place scheduled for the hearing at least ten days prior to the hearing.

109.5.2. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence. All parties shall have access to the Division's files and to all materials and information gathered in any investigation to the extent permitted by law.

109.5.3. Intervention is prohibited.

109.5.4. Hearings shall be open to all parties, except that a hearing on an applicant's fitness for registration, licensure or certification shall be conducted in a closed session which is not open to the public. The parties named in the Notice of Agency Action or the Request for Agency Action may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

109.5.5. Within a reasonable time after the hearing, the presiding officer shall cause to be issued and mailed to the parties a signed order in writing based on the facts appearing in the agency's files and on the facts presented in evidence at the hearing. The order shall state the decision and the reasons therefor and a notice of the right of administrative review [~~or~~]and judicial review available to the parties including applicable time limits.

109.5.6. The Division may, but shall not be required to, record the hearing. If a record has been made, any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the proceedings.

KEY: real estate appraisal

May 3, 1999

Notice of Continuation September 12, 1997

61-2b-30

Education, Administration

R277-458

70% Utilization of School Buildings

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 22024

FILED: 04/30/1999, 15:34

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because of conflict among competing state laws and the implementing rules.

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

(DAR Note: This action by the Board of Education repeals Rule R277-458 effective April 30, 1999. A corresponding proposed permanent repeal is under DAR No. 22025 in this issue of the *Bulletin*. This rulemaking action effectively eliminates the need for the Division of Administrative Rules (Division) to take further action pursuant to H.B. 193 (1999 Utah Laws 373). H.B. 193 did not reauthorize Subsection R277-458-3(C)(3)(a). Additionally, H.B. 193 required the Division to "make amendments to any rules necessary to conform the rule content and structure, including renumbering subsections and deleting cross-references made obsolete by the repeal of . . . Subsection [R277-458-3(C)(3)(a)] . . ." The Division found no other content, structure, subsection numbering, or cross-references that had been made obsolete beyond those that appeared in Rule R277-458.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** Repeal of this rule may reduce the cost for computation of school utilization necessary to determine whether a school must be closed.

❖**LOCAL GOVERNMENTS:** Repeal of this rule may reduce the cost for computation of school utilization necessary to determine whether a school must be closed.

❖**OTHER PERSONS:** Unknown--reduced expenses relating to elimination of forced transfers from closed schools to other schools in the district.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Potential costs or savings are speculative. For instance, without a 70% floor

for schools, districts could, due to parental pressure, keep schools open at very cost-prohibitive levels. Or, districts could arbitrarily close certain schools and not others and face expensive litigation based on equity. The possible losses to district funds are in addition to potentially increased costs/taxes to local taxpayers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses--Steven O. Laing.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Legislation approved during the 1999 session has sharpened the conflict among those laws and the State Board of Education's implementing rules. While the State Board of Education desires to implement legislative intent, it needs additional guidance from the Legislature concerning the balance which the Legislature would like to have enforced among those competing concepts.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 04/30/1999

AUTHORIZED BY: Carol B. Lear, School Law Coordinator

R277. Education, Administration.

~~[R277-458. 70% Utilization of School Buildings.~~

~~R277-458-1. Definitions:~~

- ~~— A. "Board" means the Utah State Board of Education.~~
- ~~— B. "Instructional station" means a classroom, laboratory, shop, study hall, or physical education facility designed for student instruction. For example, if a gymnasium were designed to accommodate two P.E. classes, the gymnasium would represent two instructional stations.~~
- ~~— C. "Intolerable classroom" means a space too small for intended use, a space with undesirable environmental conditions that cannot be corrected, approved rent space, makeshift space, a library or stage used as a classroom, and any space declared unsuitable by the State Fire Marshal.~~
- ~~— D. "Five-year plan" means the comprehensive capital outlay plan required under R277-452.~~

~~R277-458-2. Authority and Purpose:~~

- ~~— A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-17a-142 which requires that school buildings operate at no less than 70% of maximum capacity and provides exceptions, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~— B. The purpose of this rule is to specify standards for the efficient use of public school buildings.~~

~~R277-458-3. School Building Utilization:~~

- ~~— A. As part of its five-year plan, a local school district shall certify to the Board based upon October 1 of the current year or the previous year peak student enrollments:~~
 - ~~— (1) that the district is in compliance with Section 53A-17a-142 and Board standards regulating school building utilization. A district may demonstrate compliance with Section 53A-17a-142 by using eighty percent capacity if computed with the student instruction stations option (see Sections 3(C)(2) and (3)); and~~
 - ~~— (2) the calculated capacity of each school in the district.~~
- ~~— B. A school need not meet either student capacity standard of Section 3(A)(1) if it qualifies under any of the following:~~
 - ~~— (1) the nearest elementary school for transfer purposes is more than a three-mile radius in distance from other elementary schools;~~
 - ~~— (2) the nearest middle or junior high school for transfer purposes is more than a five-mile radius in distance from other middle or junior high schools;~~
 - ~~— (3) the nearest high school for transfer purposes is more than a ten-mile radius in distance from other high schools;~~
 - ~~— (4) the school operating at less than the student capacity standard could not be closed and the students moved to eligible transfer schools without the transfer schools exceeding 100% of capacity as determined by R277-458-3C(1);~~
 - ~~— (5) there is only one elementary school, one junior high or middle school, and one high school in the district.~~
- ~~— C. Student capacity is determined as follows:~~
 - ~~— (1) computing building capacity according to one of the following three options:~~
 - ~~— (a) 70% Standard: computing the capacity based on Utah State Office of Education square feet per student criteria;~~
 - ~~— (b) Student Instructional Space Standard: computing capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3);~~
 - ~~— (c) 70% Average Capacity Standard: computing the average of capacity based on Utah State Office of Education square feet per student criteria, and capacity as determined by student instruction stations as defined under R277-458-3C(2) and (3);~~
 - ~~— (2) identifying by room number or description each instructional station within a school. Intolerable classrooms and auxiliary spaces are not counted in calculating student capacity. Instructional spaces of less than 500 square feet in area, except for spaces for special education, are not counted in calculating student capacity. Rented instructional space may be excluded in computing building capacity providing rental fees cover district overhead costs for maintenance and operation. If option (b) is used and intolerable classrooms and spaces are excluded from the capacity calculation, schools must operate at 80% of capacity;~~

— (3) determining the number of student instructional stations or the student capacity of each room or instruction station identified:

— (a) in computing capacity of regular classrooms, the following standards apply:

— (i) kindergarten: 20 students per classroom, per day—two one-half day sessions;

— (ii) grades one through three: 15 students per classroom;

— (iii) grades four through six: 20 students per classroom;

— (iv) junior high and middle school: 20 students per classroom;

— (v) junior high/senior high combinations: 20 and one-half students per classroom;

— (vi) senior high: 20 students per classroom.

— (b) student capacity for laboratories, physical education facilities, shops, study halls, self-contained special education classrooms, facilities jointly financed by school districts and another community agency for joint use, and similar rooms must be calculated individually. Capacity for self-contained special education classrooms shall be based upon students per class as defined by Board special education standards. Sufficient documentation must be filed to be available for audits.

— (c) capacities of relocatable classrooms are included if in use;

— (d) auditoriums; multi-purpose rooms; not more than one elementary school computer laboratory per elementary school; library media centers; rooms for federal Headstart programs; other rooms used for required state or federal programs; auxiliary spaces, such as stages; laboratories which are part of vocational or science programs; and pull-out rooms within team-teaching spaces are not included in calculating student instruction stations.

— (e) a district which adopts a voted leeway specifically to reduce classroom size may use student capacity goals stipulated in its leeway election literature or its board minutes to establish a lesser instruction station capacity. Instruction station capacity may be reduced by the same percentage as the district decrease in teacher-pupil ratios as a result of the leeway.

— (4) adjusting, at the option of the district, with Utah State Office of Education approval, for building capacity which is based on square foot data for the following:

— (a) self-contained classrooms for handicapped students. The square footage for the classroom may be reduced proportionally according to the ratio of the regular student capacity of the room less the recommended students per class as defined by the Board special education standards, divided by the regular student capacity of the room;

— (b) approved rental instructional areas;

— (c) facilities jointly financed and used by a school district and another community agency. Reductions are made proportionally to the community share for capital costs;

— (d) a voted leeway adopted specifically to reduce class size. The square footage for a building may be reduced by the same percentage as the decrease in teacher-pupil ratios resulting from the voted leeway.

— D. If undue hardship or inequities are created through exact application of the standards adopted under this section, a school district may request the Board to make exceptions in individual cases:

— E. Schools which do not meet the seventy per cent utilization or the student instructional space standard may be granted exception if:

— (1) the school district demonstrates to the satisfaction of the Board that the school is in a projected high student growth area, including inter and intra district student transfers, in which the school is projected to reach seventy per cent utilization within three years' time;

— (2) the school is being closed by action of the local board with closure to be accomplished by the end of the following school year; or

— (3) the school district demonstrates to the satisfaction of the Board that costs incurred in complying with the standards exceed the costs of continued operation of a facility.

— F. District school building plans approved by the Board may not exceed the Utah State Office of Education per student space criteria unless the district has only one elementary school, one junior high or middle school, and one high school.

R277-458-4. Guidelines for Day Care Centers in Public Schools.

— A. A school district board may authorize the use of part of a school building for a child care center only if the school is in compliance with Section 53A-17a-142.

— B. Establishment of a child care center in a public school building is contingent upon the local school board determining that the center will not interfere with the building's use for regular school purposes.

— C. The decision in Subsection (4)(B) shall be made at the sole discretion of the local school board.

KEY: education finance, educational facilities
August 15, 1998 **Art X Sec 3**
Notice of Continuation April 15, 1997 **53A-1-401(3)**
53A-17a-142]



**End of the Notices of 120-Day
(Emergency) Rules Section**

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

Natural Resources; Oil, Gas and Mining; Coal **R645-101** Restrictions on State Employees

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21976
FILED: 04/19/1999, 13:47
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: The rule is enacted under the provisions of Section 40-10-6.5 and is a part of the State's coal regulatory primacy program under the (federal) Surface Coal Mining and Reclamation Act (Pub. L. No. 95-87).

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: The rule is an integral part of the State's coal regulatory primacy program and as such is needed to maintain primacy in coal regulation for 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
Suite 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: 04/19/1999

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Natural Resources; Oil, Gas and Mining; Coal **R645-104** Protection of Employees

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21977
FILED: 04/19/1999, 13:47
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: The rule is enacted under the provisions of Section 40-10-6.5 and is a part of the State's coal regulatory primacy program under the (federal) Surface Coal Mining and Reclamation Act (Pub. L. No. 95-87).

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REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is an integral part of the State's coal regulatory primacy program and as such is needed to maintain primacy in coal regulation for 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
Suite 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

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

Natural Resources
Oil, Gas and Mining; Coal
Suite 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.

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

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

EFFECTIVE: 04/19/1999

EFFECTIVE: 04/19/1999



Natural Resources; Oil, Gas and Mining; Coal

R645-401

Inspection and Enforcement: Civil Penalties

Natural Resources; Oil, Gas and Mining; Oil and Gas

R649-6

Gas Processing and Waste Crude Oil Treatment

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21978
FILED: 04/19/1999, 13:47
RECEIVED BY: NL

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 21979
FILED: 04/19/1999, 13:47
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: The rule is enacted under the provisions of Section 40-10-6.5 and is a part of the State's coal regulatory primacy program under the (federal) Surface Coal Mining and Reclamation Act (Pub. L. No. 95-87).

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Section 40-6-5 and is intended to assure that certain liquifiable hydrocarbons are accounted for in monthly gas processing reports.

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.

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: The rule is an integral part of the State's oil and gas conservation program and as such is needed to assure that certain produced hydrocarbons are accounted for in monthly reports.

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

Natural Resources
Oil, Gas and Mining; Oil and Gas
Suite 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: 04/19/1999



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Environmental Quality

Air Quality

(DAR correction notice: In the April 1, 1999, *Bulletin*, an effective notice for the repeal of R307-155 was printed. The published date was listed as November 15, 1999. It was actually published November 15, 1998. The notice should have been:

No. 21592 (REP): R307-155. Emission Inventories.
Published: November 15, 1998
Effective: March 4, 1999

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 21890 (AMD): R414-1. Utah Medicaid Program.
Published: March 15, 1999
Effective: April 23, 1999

No. 21891 (REP): R414-31X. Hospital Utilization Review.

Published: March 15, 1999
Effective: April 23, 1999

No. 21892 (AMD): R414-307. Eligibility Determination and Redetermination.
Published: March 15, 1999
Effective: April 23, 1999

Health Systems Improvement, Health Facility Licensure

No. 21859 (AMD): R432-2. General Licensing Provisions.
Published: March 1, 1999
Effective: April 21, 1999

Insurance

Administration

No. 21848 (NEW): R590-195. Rental Care Related Licensing Rule.
Published: March 1, 1999
Effective: April 22, 1999

Public Safety

Fire Marshal

No. 21901 (AMD): R710-9. Rules Pursuant to the Utah Fire Prevention Law.
Published: March 15, 1999
Effective: April 19, 1999

Tax Commission

Auditing

No. 21740 (AMD): R865-13G-14. Environmental Assurance Fee Pursuant to Utah Code Ann. Section 19-6-410.5.
Published: January 1, 1999
Effective: April 28, 1999

Transportation

Motor Carrier

No. 21780 (AMD): R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.
Published: February 1, 1999
Effective: May 4, 1999

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 1999, including notices of effective date received through April 30, 1999, the effective dates of which are no later than May 15, 1999. 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).

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

<p>AMD = Amendment CPR = Change in proposed rule EMR = Emergency rule (120 day) NEW = New rule 5YR = Five-Year Review EXD = Expired</p>	<p>NSC = Nonsubstantive rule change REP = Repeal R&R = Repeal and reenact * = Text too long to print in <i>Bulletin</i>, or repealed text not printed in <i>Bulletin</i></p>
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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	21887	NSC	03/05/99	Not Printed
R25-7	Travel-Related Reimbursements for State Employees	21888	NSC	03/05/99	Not Printed
R25-8	Meal Allowance	21889	NSC	03/05/99	Not Printed
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	21751	NEW	03/18/99	99-2/2
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-5	Grazing Advisory Boards	21884	5YR	02/22/99	99-6/27
<u>Plant Industry</u>					
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	21701	AMD	01/15/99	98-24/8
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	21808	AMD	03/18/99	99-4/7

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
COMMERCE					
<u>Occupational and Professional Licensing</u>					
R156-5a	Podiatric Physician Licensing Act Rules	21907	5YR	03/02/99	99-7/54
R156-24a	Physical Therapist Practice Act Rules	21716	AMD	see CPR	98-24/11
R156-24a	Physical Therapist Practice Act Rules	21716	CPR	03/09/99	99-3/56
R156-28	Veterinary Practice Act Rules	21753	AMD	02/18/99	99-2/3
R156-31b	Nurse Practice Act Rules	21903	AMD	04/15/99	99-6/4
R156-37c	Utah Controlled Substance Precursor Act Rules	21908	5YR	03/02/99	99-7/54
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	21905	5YR	03/01/99	99-6/27
R156-50	Private Probation Provider Licensing Act Rules	21822	AMD	03/18/99	99-4/9
R156-62-302	Qualifications for Registration	21899	AMD	04/15/99	99-6/6
R156-63	Security Personnel Licensing Act Rules	21855	AMD	04/01/99	99-5/7
R156-74	Certified Shorthand Reporters Licensing Act Rules	21812	NEW	03/18/99	99-4/12
R156-78	Rules of the Certified Shorthand Reporters Licensing Board	21813	REP	03/18/99	99-4/13
<u>Real Estate</u>					
R162-101	Authority and Definitions	22000	EMR	05/03/99	99-10/90
R162-102	Licensing Procedures	22001	EMR	05/03/99	99-10/91
R162-103	Appraisal Education Requirements for Prelicense and Continuing Education Course, School and Instructor Certification	22002	EMR	05/03/99	99-10/94
R162-104	Experience Requirement	22003	EMR	05/03/99	99-10/98
R162-105	Scope of Authority	22004	EMR	05/03/99	99-10/100
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R251-105	Applicant Qualifications for Employment with Department of Corrections	21829	AMD	03/29/99	99-4/15
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R277-436	Gang Prevention and Intervention Programs in the Schools	21902	AMD	04/15/99	99-6/12
R277-437	Student Enrollment Options	21677	NEW	01/05/99	98-23/4
R277-455	Standards and Procedures for Building Plan Review	21895	5YR	02/26/99	99-6/29
R277-458	70% Utilization of School Buildings	22024	EMR	04/30/99	99-10/107
R277-470	Distribution of Funds for Charter Schools	21773	NSC	01/27/99	Not Printed
R277-519	Educator In-service Procedures and Credit	21824	AMD	03/22/99	99-4/19
R277-601	Standards for Utah School Buses and Operations	21896	5YR	02/26/99	99-6/29
R277-702	Procedures for the Utah General Educational Development Certificate	21825	AMD	03/22/99	99-4/20
R277-712	Advanced Placement Programs	21897	5YR	02/26/99	99-6/30
R277-733	Adult Basic Skills and Adult High School Programs	21826	AMD	03/22/99	99-4/22
R277-734	Standards and Procedures for Adult Education Section 353 Funds	21898	5YR	02/26/99	99-6/30
R277-735	Standards and Procedures for Corrections Education Programs Serving Inmates of the Utah Department of Corrections	21678	NEW	01/05/99	98-23/6
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R280-201	USOR ADA Complaint Procedure	21679	NEW	01/05/99	98-23/8
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R307-101-2	Definitions	21782	AMD	04/08/99	99-3/4
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R307-150	Emission Inventories	21591	NEW	see CPR	98-22/56
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R307-155	Hazardous Air Pollutant Inventory	21593	CPR	03/04/99	99-3/59
R307-158	Emission Statement Inventory	21594	NEW	see CPR	98-22/64
R307-158	Emission Statement Inventory	21594	CPR	03/04/99	99-3/60
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R307-170	Continuous Emission Monitoring Program	21504	CPR	04/01/99	99-5/51
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R307-221	Emission Controls for Existing Municipal Solid Waste Landfills	21850	NSC	02/27/99	Not Printed
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R307-415-3	Definitions	21589	AMD	01/07/99	98-22/68
R307-417	Permits: Acid Rain Sources	21735	AMD	03/05/99	99-1/3
R307-417	Permits: Acid Rain Sources	21910	5YR	03/05/99	99-7/55
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R311-201	Underground Storage Tanks: Certification Program	21854	NSC	02/27/99	Not Printed
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R313-15-906	Procedures for Receiving and Opening Packages	21685	AMD	03/12/99	98-24/32
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R315-2	General Requirements - Identification and Listing of Hazardous Waste	21459	CPR	02/15/99	99-1/28
R315-2-2	Definition of Solid Waste	21856	AMD	04/15/99	99-5/20
R315-301-2	Definitions	21783	AMD	03/15/99	99-3/10
R315-304	Industrial Solid Waste Landfill Requirements	21439	AMD	see CPR	98-19/50
R315-304	Industrial Solid Waste Landfill Requirements	21439	CPR	01/05/99	98-23/45
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R315-305-5	Requirements for Operation	21785	AMD	03/15/99	99-3/18
R315-315-6	PCB Containing Waste	21786	AMD	03/15/99	99-3/19
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R325-3	Utah State Fair Patron Rules	21874	AMD	04/05/99	99-5/24
R325-4	Interim Patrons Rules (Other Than Utah State Fair)	21875	AMD	04/05/99	99-5/25
R325-5	Interim Renters Rules (Other Than Utah State Fair)	21876	AMD	04/05/99	99-5/26
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R382-10	Eligibility	21843	NSC	02/27/99	Not Printed
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R410-14	Division of Health Care Financing Administrative Hearing Procedures for Medicaid/UMAP Applicants, Recipients and Providers, and Non-Medicaid/UMAP Nursing Home Residents as per "OBRA" Preadmission Screening and Annual Resident Review (PASARR) Determinations/Resident Rights Requirements	21668	AMD	01/07/99	98-23/14
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R414-29	Client Review/Education and Restriction Policy	21687	AMD	01/21/99	98-24/50
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R414-54	Speech-Language Pathology Services	21935	5YR	03/31/99	99-8/73
R414-58	Children's Organ Transplants	21857	5YR	02/12/99	99-5/58
R414-303	Coverage Groups	21529	AMD	01/05/99	98-21/31
R414-304	Income and Budgeting	21764	AMD	02/25/99	99-2/4
R414-307	Eligibility Determination and Redetermination	21892	AMD	04/23/99	99-6/19
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R426-1	Ambulance Rules	21693	AMD	02/26/99	98-24/51
R426-1-8	Maximum Licensed Services Transportation Rates and Charges	21649	AMD	01/07/99	98-23/22
R426-2	Air Medical Service Rules	21688	AMD	01/22/99	98-24/59
R426-3	Utah Mobile Paramedic Rules	21694	AMD	01/22/99	98-24/61
R426-4	Emergency Medical Dispatcher Rules	21695	AMD	01/22/99	98-24/67
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R432-2	General Licensing Provisions	21859	AMD	04/21/99	99-5/29
R432-3	General Health Care Facility Rules Inspection and Enforcement	21776	5YR	01/11/99	99-3/68
R432-4	General Construction	21815	5YR	01/29/99	99-4/68
R432-5	Nursing Facility Construction	21816	5YR	01/29/99	99-4/68
R432-6	Assisted Living Facility General Construction	21700	AMD	01/29/99	98-24/69
R432-6	Assisted Living Facility General Construction	21817	5YR	01/29/99	99-4/69
R432-100-23	Blood Services	21796	AMD	04/07/99	99-4/25
R432-149	Intermediate Care Facility	21818	5YR	01/29/99	99-4/69
R432-149	Intermediate Care Facility	21797	REP	04/07/99	99-4/26
R432-150	Nursing Care Facility Rules	21752	R&R	02/25/99	99-2/15
R432-250	Residential Health Care Facilities	21528	REP	01/20/99	98-21/42
R432-270	Assisted Living Facilities	21722	R&R	01/29/99	98-24/70
R432-300	Residential Health Care Facility - Limited Capacity - Type N	21561	R&R	01/11/99	98-22/73
R432-650	End Stage Renal Disease Facility Rules	21562	AMD	01/11/99	98-22/82
R432-750	Hospice Rule	21734	AMD	02/25/99	99-1/3
<u>Health Systems Improvement, Primary Care and Rural Health</u>					
R434-10	Physicians and Physician Assistants Grant and Scholarship Program	21802	AMD	03/26/99	99-4/36
R434-20	Special Population Health Care Provider Financial Assistance Program	21666	NEW	01/07/99	98-23/26
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R501-14	Criminal Background Screening	21821	AMD	03/22/99	99-4/47
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R510-103	Use of Senior Centers by Long Term Care Facility Residents and Senior Citizens' Groups Participating in Activities Outside Their Planning and Service Area	21730	AMD	02/03/99	99-1/14

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R510-111	Policy on Use of State Funding for Travel Expenses to Assist the National Senior Service Corps (NSSC)	21886	NSC	02/27/99	Not Printed
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R527-56	In-Kind Support	21871	AMD	04/05/99	99-5/35
R527-200	Administrative Procedures	21675	AMD	01/04/99	98-23/33
R527-210	Guidelines for Setting Child Support Awards	21809	5YR	01/26/99	99-4/70
R527-210	Guidelines for Setting Child Support Awards	21810	NSC	01/27/99	Not Printed
R527-378	Garnishment of Social Security Benefits	21726	AMD	01/15/99	98-24/90
R527-430	Administrative Notice of Lien-Levy Procedures	21811	AMD	03/18/99	99-4/49
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R590-96	Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities	21766	AMD	03/16/99	99-2/46
R590-135	Accounting Records Rule	21723	REP	03/18/99	98-24/91
R590-160	Administrative Proceedings	21804	5YR	01/22/99	99-4/71
R590-165	Health Benefit Plans	21790	AMD	03/16/99	99-3/23
R590-167	Individual and Small Employer Health Insurance Rule	21791	AMD	03/11/99	99-3/24
R590-170	Fiduciary and Trust Account Obligations	21725	NEW	see CPR	98-24/95
R590-170	Fiduciary and Trust Account Obligations	21725	CPR	03/18/99	99-3/62
R590-175	Basic Health Care Plan Rule	21792	AMD	03/11/99	99-3/29
R590-194	Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism	21765	NEW	03/23/99	99-2/52
R590-195	Rental Car Related Licensing Rule	21848	NEW	04/22/99	99-5/36
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R602-2-1	Pleadings and Discovery	21845	AMD	04/05/99	99-5/38
R602-2-4	Attorney Fees	21846	AMD	04/05/99	99-5/40
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R614-1-4	Incorporation of Federal Standards	21847	AMD	04/05/99	99-5/41
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R645-101	Restrictions on State Employees	21976	5YR	04/19/99	99-10/110
R645-104	Protection of Employees	21977	5YR	04/19/99	99-10/110
R645-401	Inspection and Enforcement: Civil Penalties	21978	5YR	04/19/99	99-10/111
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R647-2	Exploration	21757	AMD	02/26/99	99-2/54
R647-3	Small Mining Operations	21758	AMD	02/26/99	99-2/55
R647-4	Large Mining Operations	21759	AMD	02/26/99	99-2/56
<u>Oil, Gas and Mining: Oil and Gas</u>					
R649-6	Gas Processing and Waste Crude Oil Treatment	21979	5YR	04/19/99	99-10/111
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R652-70-2300	Management of Bear Lake Sovereign Lands	21672	AMD	01/14/99	98-23/36
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R653-2	Financial Assistance from the Board of Water Resources	21736	AMD	02/02/99	99-1/15
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R657-5	Taking Big Game	21717	AMD	01/15/99	98-24/96
R657-27	License Agent Procedures	21827	AMD	03/18/99	99-4/51
R657-38	Dedicated Hunter Program	21719	AMD	01/15/99	98-24/107
R657-42	Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	21720	AMD	01/15/99	98-24/109
R657-43	Landowner Permits	21721	AMD	01/15/99	98-24/110
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<u>Administration</u>					
R698-4	Certification of the Law Enforcement Agency of a Private College or University	21779	NEW	03/05/99	99-3/33
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R708-2	Commercial Driver Training Schools	21579	R&R	see CPR	98-22/115
R708-2	Commercial Driver Training Schools	21579	CPR	03/18/99	99-4/61
R708-30	Motorcycle Rider Training Schools	21881	5YR	02/17/99	99-6/32
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R710-1	Concerns Servicing Portable Fire Extinguishers	21708	AMD	01/15/99	98-24/112
R710-3	Assisted Living Facilities	21709	AMD	01/15/99	98-24/116
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	21710	AMD	01/15/99	98-24/117
R710-6	Liquefied Petroleum Gas Rules	21733	AMD	02/02/99	99-1/17

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R710-8	Day Care Rules	21712	CPR	02/23/99	99-2/88
R710-9	Rules Pursuant to the Utah Fire Prevention Law	21901	AMD	04/19/99	99-6/21
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R714-600	Performance Standards for Tow-Truck Motor Carriers	21882	NEW	04/15/99	99-6/25
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<u>Administration</u>					
R746-365	Intercarrier Service Quality	20997	NEW	see CPR	98-9/50
R746-365	Intercarrier Service Quality	20997	CPR	01/13/99	98-18/39
R746-365	Intercarrier Service Quality	21774	NSC	01/15/99	Not Printed
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<u>Administration</u>					
R765-607	Utah Higher Education Tuition Assistance Program	21673	NEW	01/04/99	98-23/38
R765-607	Utah Higher Education Tuition Assistance Program	21771	NSC	01/27/99	Not Printed
R765-685	Utah Educational Savings Plan Trust	21674	AMD	01/04/99	98-23/40
<u>Salt Lake Community College</u>					
R784-1	Government Records Access and Management Act Rules	21820	NEW	03/18/99	99-4/57
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<u>Administration</u>					
R850-20-175	Coal Leasing of Lands Acquired in Public Law 105-335 Exchanges	21909	EXP	03/03/99	99-7/52
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<u>Auditing</u>					
R865-6F-34	Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701	21760	AMD	03/16/99	99-2/58
R865-6F-35	S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703	21761	AMD	03/16/99	99-2/59
DAR Note: The following three sections will be combined to create one new rule, "R865-7H. Environmental Assurance Fee."					
R865-7H-1	Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5	21737	NEW	03/16/99	99-1/22
R865-7H-2	Environmental Assurance Fee on Packaged Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5	21738	NEW	03/16/99	99-1/24
R865-7H-3	Environmental Assurance Fee on Exports of Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5	21739	NEW	03/16/99	99-1/24

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R865-13G-14	Environmental Assurance Fee Pursuant to Utah Code Ann. Section 19-6-410.5	21740	AMD	04/28/99	99-1/25
<u>Property Tax</u>					
R884-24P-52	Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103	21326	AMD	see CPR	98-16/58
R884-24P-52	Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103	21326	CPR	01/12/99	98-23/46
R884-24P-53	1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515	21777	EMR	01/12/99	99-3/64
R884-24P-53	1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515	21789	AMD	03/16/99	99-3/46
R884-24P-61	1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405	21762	AMD	03/16/99	99-2/60
R884-24P-63	Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406	21676	AMD	03/16/99	98-23/42
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<u>Motor Carrier</u>					
R909-1	Safety Regulations for Motor Carriers	21756	AMD	03/15/99	99-2/62
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes	21780	AMD	05/04/99	99-3/49
<u>Motor Carrier, Ports of Entry</u>					
R912-3	Restriction of Truck Traffic on SR-128. Legal and Permitted Vehicles	21799	NSC	01/27/99	Not Printed
R912-8	Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah	21800	NSC	01/27/99	Not Printed
R912-76	Single Tire Configuration	21801	NSC	01/27/99	Not Printed
WORKFORCE SERVICES					
<u>Employment Development</u>					
R986-413	Program Standards	21705	AMD	01/20/99	98-24/122
R986-414	Income	21581	AMD	01/20/99	98-22/133
R986-414	Income	21763	AMD	04/08/99	99-2/64
R986-417	Documentation	21582	AMD	01/20/99	98-22/134
R986-419	Income Limits	21706	AMD	01/20/99	98-24/124
R986-420	Maximum Allotments	21707	AMD	01/20/99	98-24/125
R986-421	Demonstration Programs	21585	AMD	01/20/99	98-22/136
R986-501	Displaced Homemaker Program	21883	5YR	02/19/99	99-6/32

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R994-405	Ineligibility for Benefits	21746	AMD	02/17/99	99-2/72
R994-405	Ineligibility for Benefits	21748	AMD	02/17/99	99-2/77
R994-405	Ineligibility for Benefits	21749	AMD	02/17/99	99-2/83
R994-405	Ineligibility for Benefits	21747	NSC	02/20/99	Not Printed
R994-600	Dislocated Workers	21770	AMD	03/05/99	99-3/51

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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	

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	21591	R307-150	CPR	03/04/99	99-3/57
	21592	R307-155	REP	03/04/99	98-22/60
	21593	R307-155	NEW	see CPR	98-22/62
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	21504	R307-170	R&R	see CPR	98-20/5
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	21844	R307-214	5YR	02/03/99	99-5/57
	21595	R307-221	AMD	01/07/99	98-22/66
	21850	R307-221	NSC	02/27/99	Not Printed
	21570	R307-302-2	AMD	01/07/99	98-22/67
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	21752	R432-150	R&R	02/25/99	99-2/15
	21528	R432-250	REP	01/20/99	98-21/42
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	21846	R602-2-4	AMD	04/05/99	99-5/40
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	21771	R765-607	NSC	01/27/99	Not Printed
	21674	R765-685	AMD	01/04/99	98-23/40
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	21821	R501-14	AMD	03/22/99	99-4/47
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	21764	R414-304	AMD	02/25/99	99-2/4
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	21585	R986-421	AMD	01/20/99	98-22/136
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	21535	R313-16	AMD	01/15/99	98-21/27
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	21790	R590-165	AMD	03/16/99	99-3/23
	21791	R590-167	AMD	03/11/99	99-3/24
	21725	R590-170	NEW	see CPR	98-24/95
	21725	R590-170	CPR	03/18/99	99-3/62
	21792	R590-175	AMD	03/11/99	99-3/29
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	21723	R590-135	REP	03/18/99	98-24/91
	21765	R590-194	NEW	03/23/99	99-2/52
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	20997	R746-365	CPR	01/13/99	98-18/39
	21774	R746-365	NSC	01/15/99	Not Printed
<u>INVENTORIES</u>					
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	21591	R307-150	NEW	see CPR	98-22/56
	21591	R307-150	CPR	03/04/99	99-3/57
	21592	R307-155	REP	03/04/99	98-22/60
	21593	R307-155	NEW	see CPR	98-22/62
	21593	R307-155	CPR	03/04/99	99-3/59
	21594	R307-158	NEW	see CPR	98-22/64
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	21716	R156-24a	CPR	03/09/99	99-3/56
	21753	R156-28	AMD	02/18/99	99-2/3
	21903	R156-31b	AMD	04/15/99	99-6/4
	21908	R156-37c	5YR	03/02/99	99-7/54
	21905	R156-39a	5YR	03/01/99	99-6/27
	21822	R156-50	AMD	03/18/99	99-4/9
	21899	R156-62-302	AMD	04/15/99	99-6/6
	21855	R156-63	AMD	04/01/99	99-5/7
	21812	R156-74	NEW	03/18/99	99-4/12
	21813	R156-78	REP	03/18/99	99-4/13
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	21821	R501-14	AMD	03/22/99	99-4/47
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	21850	R307-221	NSC	02/27/99	Not Printed
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	21886	R510-111	NSC	02/27/99	Not Printed
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	21589	R307-415-3	AMD	01/07/99	98-22/68
	21735	R307-417	AMD	03/05/99	99-1/3
	21910	R307-417	5YR	03/05/99	99-7/55
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<u>PERMITTING AUTHORITY</u>					
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	21910	R307-417	5YR	03/05/99	99-7/55
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	21789	R884-24P-53	AMD	03/16/99	99-3/46
	21762	R884-24P-61	AMD	03/16/99	99-2/60
	21676	R884-24P-63	AMD	03/16/99	98-23/42
<u>PETROLEUM</u>					
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Health, Health Systems Improvement, Primary Care and Rural Health	21802	R434-10	AMD	03/26/99	99-4/36
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	21789	R884-24P-53	AMD	03/16/99	99-3/46
	21762	R884-24P-61	AMD	03/16/99	99-2/60
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	21678	R277-735	NEW	01/05/99	98-23/6
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	20997	R746-365	CPR	01/13/99	98-18/39
	21774	R746-365	NSC	01/15/99	Not Printed
<u>QUARANTINE</u>					
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	21808	R68-15	AMD	03/18/99	99-4/7
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	21807	R313-38	5YR	01/25/99	99-4/66
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	21889	R25-8	NSC	03/05/99	Not Printed
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	22002	R162-103	EMR	05/03/99	99-10/94
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	22007	R162-109	EMR	05/03/99	99-10/105
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	21977	R645-104	5YR	04/19/99	99-10/110
	21978	R645-401	5YR	04/19/99	99-10/111
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	21591	R307-150	CPR	03/04/99	99-3/57
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	21873	R325-2	AMD	04/05/99	99-5/23
	21874	R325-3	AMD	04/05/99	99-5/24
	21875	R325-4	AMD	04/05/99	99-5/25
	21876	R325-5	AMD	04/05/99	99-5/26
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	21579	R708-2	CPR	03/18/99	99-4/61
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	21666	R434-20	NEW	01/07/99	98-23/26
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	21579	R708-2	CPR	03/18/99	99-4/61
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	21846	R602-2-4	AMD	04/05/99	99-5/40
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	21813	R156-78	REP	03/18/99	99-4/13
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Regents (Board of), Salt Lake Community College	21820	R784-1	NEW	03/18/99	99-4/57
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<u>SOLID WASTE MANAGEMENT</u>					
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	21439	R315-304	AMD	see CPR	98-19/50
	21439	R315-304	CPR	01/05/99	98-23/45
	21772	R315-304-1	NSC	01/05/99	Not Printed
	21785	R315-305-5	AMD	03/15/99	99-3/18
	21786	R315-315-6	AMD	03/15/99	99-3/19
	21787	R315-317	AMD	03/15/99	99-3/20
	21920	R315-320	5YR	03/12/99	99-7/55
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	21888	R25-7	NSC	03/05/99	Not Printed
	21889	R25-8	NSC	03/05/99	Not Printed

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Education, Administration	21902	R277-436	AMD	04/15/99	99-6/12
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	21807	R313-38	5YR	01/25/99	99-4/66
<u>TAXATION</u>					
Tax Commission, Auditing	21760	R865-6F-34	AMD	03/16/99	99-2/58
	21761	R865-6F-35	AMD	03/16/99	99-2/59
DAR Note: The following three sections will be combined to create one new rule, "R865-7H. Environmental Assurance Fee."					
	21737	R865-7H-1	NEW	03/16/99	99-1/22
	21738	R865-7H-2	NEW	03/16/99	99-1/24
	21739	R865-7H-3	NEW	03/16/99	99-1/24
	21740	R865-13G-14	AMD	04/28/99	99-1/25
Tax Commission, Property Tax	21326	R884-24P-52	AMD	see CPR	98-16/58
	21326	R884-24P-52	CPR	01/12/99	98-23/46
	21777	R884-24P-53	EMR	01/12/99	99-3/64
	21789	R884-24P-53	AMD	03/16/99	99-3/46
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	20997	R746-365	CPR	01/13/99	98-18/39
	21774	R746-365	NSC	01/15/99	Not Printed
<u>TIRES</u>					
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<u>UNEMPLOYMENT</u>					
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	21746	R994-405	AMD	02/17/99	99-2/72
	21748	R994-405	AMD	02/17/99	99-2/77
	21749	R994-405	AMD	02/17/99	99-2/83
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	21772	R315-304-1	NSC	01/05/99	Not Printed
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