

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Editor

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

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

Division of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Governor's Executive Order 2006-0007: Wildland Fire Management

### EXECUTIVE ORDER

#### Wildland Fire Management

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

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

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

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

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

**NOW, THEREFORE**, I, Jon M. Huntsman, Jr., Governor of the State of Utah, by virtue of the power vested in me by the Constitution and the laws of the State of Utah do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of August 10, 2006, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, this 10th day of August 2006.

(State Seal)

**Jon M. Huntsman, Jr.**  
Governor

**ATTEST:**

**Gary R. Herbert**  
Lieutenant Governor

2006/0007

**End of the Special Notices Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between August 2, 2006, 12:00 a.m., and August 15, 2006, 11:59 p.m. are included in this, the September 1, 2006, 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 each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least October 2, 2006. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through December 30, 2006, 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 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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

Capitol Preservation Board (State),  
Administration  
**R131-2**  
Capitol Hill Facility Use

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE No.: 28935  
FILED: 08/15/2006, 23:50

**RULE ANALYSIS**

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

**SUMMARY OF THE RULE OR CHANGE:** Section 63C-9-301 provides for and authorizes the State Capitol Preservation Board to adopt rules governing, administering, and regulating the State Capitol Hill facilities and grounds. This rule was rewritten to clarify issues regarding public access and use of the Capitol Hill Complex, to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex, and to clarify and remove sections on solicitations and free speech activities to create new proposed rules on "Solicitations" and "Free Speech Activities". (DAR NOTE: The proposed new rule on "Solicitations" is Rule 131-10 under DAR No. 28934 and the proposed new rule on "Free Speech Activities" is Rule 131-11 under DAR No. 28933 in this issue.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63C-9-301

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The actions of the Capitol Preservation Board do not affect the state budget. Therefore, there is no anticipated cost or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** The actions of the Capitol Preservation Board do not affect local government. Therefore, there is no anticipated cost or savings to local government.
- ❖ **OTHER PERSONS:** The actions of the Capitol Preservation Board do not affect other persons. Therefore, there is no anticipated cost or savings to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The action of the Capitol Preservation Board does not affect compliance costs for affected persons.

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

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

CAPITOL PRESERVATION BOARD (STATE)  
ADMINISTRATION  
Room E110 EAST BUILDING

420 N STATE ST  
SALT LAKE CITY UT 84114-2110, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Sarah Whitney at the above address, by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at [swhitney@utah.gov](mailto:swhitney@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/09/2006

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

**R131. Capitol Preservation Board (State), Administration.**~~**R131-2. Capitol Hill Facility Use.**~~~~**R131-2-1. Purpose.**~~

~~— The purpose of this rule is to provide for use of the State Capitol Facilities for continued operation of state government.~~

~~**R131-2-2. Authority.**~~

~~— This Rule is authorized under Section 63C-9-301, which authorizes the State Capitol Preservation Board to adopt rules governing, administering and regulating the State Capitol Hill Facilities and Grounds managed by the State Capitol Preservation Board.~~

~~**R131-2-3. Definitions.**~~

~~— (1) In addition to terms defined in Section 63C-9-102,~~

~~— (a) "Board" means the Capitol Preservation Board including the administrative office of the Board.~~

~~— (b) "Capitol Hill Facilities and Grounds" includes the State Capitol Building and Grounds, State Capitol parking facilities, cafeteria, State Office building and grounds, and excludes the greenhouses.~~

~~— (c) "Commercial Activities" means any activity not meeting the above criteria. If it is determined that a Commercial Activity will include any kind of endorsements for commercial purposes of products or services, such as an advertising production, the application may be denied.~~

~~— (d) "Community Service Activities" means an activity closely related to community service activities including public awards, public recognition and public benefits.~~

~~— (e) "Executive Director" means the executive director appointed by the Board under Section 63C-9-401.~~

~~— (f) "Facility Use Application" means a form that is to be completed by a prospective user, and approved by a resident agency, to reserve space for activities held within state owned facilities. It shall require submission of the following information: (i) prospective user's name, address, and telephone number; (ii) the name of the facility being requested; (iii) the type of activity; (iv) the dates and times of the function; (v) insurance company, name and policy number, unless applicant is seeking a waiver under rule R131-2-4(22); (vi) any other special considerations being requested.~~

~~— (g) "Facility Use Permit" means a permit issued to users authorizing the permitted person(s) to use state owned facilities for designated activities. The permit shall include the following~~

information: (i) the name of the organization and individual authorized to use designated facility; (ii) the facility designated for use; (iii) purpose for use of the facility; (iv) the dates and times of the activity; (v) the fee assessed for the activity; (vi) the permit number; (vii) information required for compliance with R131-2-4(18); and (viii) the authorized resident agency representative's signature authorizing the activity.

—(h) "Fees" means charges assessed for use of state-owned facilities. The fees shall be assessed as follows:

—(i) "Freedom of Speech Activities" shall be assessed a fee using a base cost commensurate with actual cost to the state. The "Base Cost" is the actual cost to the State for utilities, janitorial, security services and cost of rental for equipment used for activity.

—(ii) "Commercial Activities" shall be assessed a fee comparable to fees charged for similar activities within the community; and

—(iii) "Community Service Activities" shall be assessed a fee the same as first amendment activities.

—The "Fee Schedule" is subject to change, and changes may be recommended to the Board by the Executive Director at any time. A fee schedule shall be provided to applicant at the time of application. The content of any first amendment activity shall not be a basis for calculating any portion of the fee.

—(i) "Freedom of Speech Activities" means an activity characterized as the right of a person or group to exercise freedom of speech or other first amendment right that is provided on government property by applicable law.

—(j) "Governmental Activities" means any activity directly related to governmental business. This does not include extra-curricular activities.

—(k) "State" means the state of Utah and any of its state officers, members of the legislature, members of the judiciary, departments, divisions, boards, agencies or commissions.

—(l) "State Sponsored Activities" means any activity directly sponsored by the state.

#### **R131-2-4. General Provisions.**

—(1)(a) Each person(s) intending to use Capitol Hill Facilities and Grounds shall first submit a completed facilities use application. Applications shall be reviewed by the Board staff to determine the applicable category for activity classification and fee assessment. Applicants who disagree with any decision regarding activity classifications or fees, may appeal using the process outlined in Rule R131-2-4(22).

—(b) Upon approval of an application, the applicant shall schedule and obtain an authorization of activities in advance, from the Executive Director. The proposed activity shall not be authorized if it interferes with the operation of governmental business or public access.

—(2) All rules in this section, apply to and cover the use of all Capitol Hill Facilities and Grounds.

—(3) Users may schedule the Capitol Hill Facilities and Grounds for activities at reasonable times. Examples of activities at the Capitol Complex might include dances in the Rotunda, rallies on the front stairs of the Capitol and in designated areas on the grounds, and meetings in the State Office Building Auditorium.

—(4) The state of Utah, any of its departments or divisions, any state employee shall not be responsible for any property damage or loss, any personal property damage or loss, or any personal injury sustained during, or as a result of, any activity.

—(5) Every group granted a facility use permit will be required to complete an application form, provide the required fee, and provide a certificate of insurance showing proof of liability insurance in the

amount of \$1,000,000 per occurrence unless an exemption or waiver is granted by the board, or executive director, in accordance with these rules:

—(6) Users may not carry or post placards or signs attached to wood or metal posts of any type, within any building. In addition, users may not post signs on the grounds or the exterior of any building. Any signs or placards placed in Capitol Hill Facilities shall be hung with rope, cord or string. No adhesive materials or wire will be allowed. Balloons may be used but need to be tied with string to banisters or railings; they may not be handed out to participants of the activity or let loose.

—(7) No temporary structure of any kind shall be constructed on Capitol Hill properties without the express written consent of the Capitol Preservation Board or the Executive Director.

—(8) The use or storage of alcoholic beverages or any unauthorized or controlled drugs in any state-owned facility or on state grounds is prohibited.

—(9) All "No Smoking" ordinances, rules and policies shall be strictly observed in all Capitol Hill Facilities.

—(10) To protect the beauty of the State Capitol, and Capitol Hill Facilities, all decorations used for a scheduled activity shall be of a temporary nature and shall be appropriate for the dignity and beauty of the structure and shall be approved by the Board or the Executive Director.

—(a) No adhesive material may be used that would leave a glue, paste, tape, oil, paint or other residue on the building.

—(b) Nothing may be used as a decoration or in the process of decorating that would cause damage to the structure.

—(c) No markings, paint or sprays may be applied to any area of the building.

—(d) Decorating during the normal work hours shall be done in a manner that limits any disturbance to normal building activities. Any decorating during other than normal hours must be coordinated with the Board or the Executive Director.

—(e) Decorating is to be done in a safe manner, using proper tools and equipment.

—(f) Users may not decorate on the outside of the State Capitol or Capitol Hill Facilities.

—(g) Signs, posters, decorations, displays, or markings must comply with all current pornography ordinances of the jurisdiction in which the facility is located.

—(11) Food services in conjunction with a permitted use in state-owned facilities is subject to the approval of the Board or the Executive Director.

—(12) Parking is available at all state-owned facilities. Users shall observe, and Protective Services will enforce, all restricted and marked parking areas.

—(a) Vehicles owned or under control of participants shall not be parked in reserved parking areas, which shall include the parking plaza on Capitol Hill, and shall not be allowed to remain overnight.

—(13) The user shall be responsible for any personal injury, vandalism, damage, or loss or other destruction of property or premises incurred during the activity.

—(14) Any animals must be specifically approved in advance by the Board or the Executive Director and must provide assurance of safety to the animal, participants and the facility.

—(15) No open flame, flammable fluids, or explosives shall be brought to or used on the premises.

—(16) A User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the Board or the Executive Director.

— (17) No money may be collected at Capitol Hill Facilities and Grounds; all tickets, if required, must be pre-sold.

— (18) Users and participants must abide by all applicable firearm laws, rules, and regulations.

— (a) The Board reserves the right to require users to notify the appropriate security agent of the anticipated presence of any person with a weapon or firearm.

— (19) These general rules are incorporated into any permit issued and into all rules governing use of any Capitol Hill facility.

— (20) No equipment shall be used nor activity engaged in which is contrary to applicable rules, regulations or state, local or governmental ordinances or codes.

— (21) No equipment shall be used nor activity shall be engaged in which will place an excessive stress load on the building structure or building systems.

— (22) Exceptions and Waivers:

— (a) State activities, its state officers, members of the legislature, members of the judiciary, departments, divisions, agencies, boards and commissions are exempt from fees and insurance requirements to the extent that the activity is covered by state Risk Management.

— (b) Governmental activities are exempt from fee and insurance requirements to the extent that the activity is covered by state Risk Management.

— (c) Freedom of speech activities — a waiver of the fee or insurance costs, or a part thereof, shall be provided for free speech activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director or the executive director's designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request, describing the grounds for the decision within five days of the submission of the request for a waiver. The applicant may appeal and request to have a hearing before the Board within five days of notification. The persons hearing the appeal shall consist of three representatives of the Board. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any outside accessory items to the activity. The applicant may provide and use any accessory item for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable — proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah, including the current state provider of insurance.

— (d) Community service activities — a waiver of the fee and/or insurance costs, or a part thereof, may be provided for community service activities if the applicant or sponsoring group can demonstrate clearly an inability to pay the fee and/or insurance. The state reserves the right to pay the insurance costs. The applicant may be requested to provide a financial statement and other relevant documents as proof of inability to make payment. A request for such a waiver must be made at time of application and shall be promptly scheduled for an informal review before the Executive Director or his designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request, describing the grounds for the

decision within five days of the submission of the request for a waiver. The applicant shall have the right to appeal and to have a hearing before the Board within five days of notification. The persons hearing the appeal shall consist of three representatives of the Board. The notice of appeal to be filed by the applicant should be in writing. Notice of the right to appeal and the appropriate procedure shall be given to applicant if denial is made. The applicant shall be allowed to submit additional or pertinent information during the appeal to support the request for a waiver. There will be no waiver of fee of costs associated with usage of equipment such as tables, chairs, podium, microphone or any accessory items to the activity. The applicant may provide and use own accessory items for an activity. An insurance waiver may be issued to an applicant that can show proof of being uninsurable — proof that coverage was denied by at least three insurance providers licensed and doing business in the state of Utah including the current state provider of insurance.

— (e) Commercial activities — no exceptions or waivers shall apply except the insurance may be waived if covered by State Risk Management. — Adult chaperons will be required for commercial activities; the number, appropriate for the nature of the event and the number and ages of the users, will be determined by the Board or the Executive Director. Chaperons will help direct roaming guests. They will check rest rooms periodically, aid in maintaining reasonable behavior and enforcement of the rules.

#### **R131-2-5. Use of Capitol Rotunda:**

— In addition to the provisions of Rule R131-2-4, the following rules for the Capitol Rotunda shall be observed:

— (1) Public use of the Capitol shall not disrupt or interfere with any legislative session or state agency business. — Safe, unhindered passageways must be provided at all times.

— (2) A Facility Use request for permit for events in the Capitol Rotunda must be received in writing at least 24 hours in advance of the time the event is proposed to commence. Priority will be given to state departments, agencies, and public school districts for use of the Capitol Rotunda. The Rotunda is available six days a week, Monday through Saturday. The facility has an established Fire Marshal occupancy limit of 2,700 people which shall not be exceeded.

— (3) The sound level of any individual or group, whether amplified or not, must not disrupt or interfere with any legislative session or state agency business.

— (4) The second floor of the Rotunda, marble stairways, and third floor balcony are available for use but access to the fourth floor, first floor, and basement areas is not allowed.

— (5) For use of committee rooms, House of Representatives Chamber, Senate Chambers, or the Supreme Court, requests must be made directly to those agencies for scheduling.

— (6) No fire exits, which shall include staircases and doorways, shall be blocked during any activity. Tables shall not be placed in front of, or so as to block, doorways in any manner.

— (7) All vehicles coming to Capitol Hill in conjunction with the activity shall park on the south side of the Capitol Building, on the circular drive south of the Capitol known as Cherry Lane, or in the small visitor parking area or the main parking lot directly east of the Capitol.

— (8) All deliveries and movement of equipment shall come to the north loading entrance, after 5:00 p.m., and shall use the south elevator between the first and second floors, unless prior arrangement has been made with the Board or the Executive Director.

— (9) Elevators used to move equipment shall be protected from damage.

—(10) All equipment brought into the building shall have rubber wheels, four inch or larger, or be hand-carried so to cause no damage to facilities.

—(11) Users shall remove all equipment, decorations and supplies by 12:00 midnight on the night of the activity unless specific arrangements are made in advance with the Board or the Executive Director.

—(12) At least two uniformed security personnel are required for every 400 participants and will be included as a part of the base cost paid by user, unless a waiver is granted for unusual circumstances.

—(13) State Capitol Protective Services personnel will determine the number of any or any additional uniformed security personnel needed for an activity, and will schedule their presence.

—(14) Users shall control entrances to allow only those persons authorized to attend the activity to enter building.

—(15) If any person or group is reasonably suspected of being in non-compliance with any of these rules, an appropriate State law enforcement officer may provide a warning to such person or group to cease and desist from such non-complying act. If a State law enforcement officer observes that an act of non-compliance continues after a warning, then a State law enforcement officer may have the person or group removed from the Capitol Hill premises, and may take any other appropriate action as provided by law.

#### **R131-2-6. Use of State Office Building Auditorium.**

—In addition to the provisions of rule R131-2-4, the following rules for the State Office Building Auditorium shall be observed:

—(1) The Auditorium is available to all state departments and agencies on a first-come, first-served basis for meetings, public hearings, bid-openings, lectures, training sessions, examinations and other similar activities. Agencies shall reserve the auditorium with the Executive Director.

—(2) When not being used by a state agency, the Auditorium may be used by private or public organizations upon receipt of a permit from the Board or the Executive Director.

—(a) The facility is available five days a week, Monday through Friday.

—(3) After hours access shall be through the first floor south doors.

—(a) The remainder of the building will be closed to the public.

—(4) The Auditorium has an established Fire Marshal occupancy limit of 225 people which shall not be exceeded.

—(5) All vehicles coming to Capitol Hill in conjunction with the activity should park in the lot on the west side of the State Office Building.

—(6) The user agency/entity shall be responsible to arrange for sufficient supervision to be present to insure that people use only the Auditorium or rest room areas on the 1st floor of the State Office Building.

#### **R131-2-7. Use of Capitol Hill Facilities and Grounds.**

—In addition to the provisions of rule R131-2-4, the following rules for the Capitol Hill Facilities and Grounds shall be observed:

—(1) Camping is prohibited on the Capitol Hill Facilities and Grounds.

—(2) When a permit is issued, the location of the activity will be specified. Participants will be required to contain the activity in the area specified in the permit.

—(3) No activity on the grounds shall interfere with normal government or other facility use activities.

—(4) No motor vehicle races, neither speed, time, endurance, exhibition nor driving competition shall be held on the Capitol Hill Facilities and Grounds.

—(5) No grass, plants, shrubs, trees, paving or concrete shall be disturbed, broken, removed or covered without the written permission of Board or the Executive Director.

—(6) The user agency/entity shall be responsible to arrange for sufficient supervision to be present to insure that people use only designated area and to insure that no damage occurs.

#### **R131-2-8. Solicitation Policy.**

—(1) Definitions

—(a) "Solicitation" means any activity which may be considered or reasonably interpreted as being for the advertisement, promotion, sale or transfer of products, or services, or for the participation in a commercial venture of any kind.

—(i) The distribution or posting of handbills, leaflets, circulars, advertising or other printed materials for the purpose cited in paragraph 1 is construed as solicitation.

—(2) Policy

—(a) Solicitation, whether on-site or through establishment of an on-going delivery service, is prohibited on Capitol Hill Facilities and Grounds, except as listed in (c) below:

—(b) No solicitation materials may be posted except on designated bulletin boards.

—(c) With the exception of bulletin boards designated for posting solicitation materials, no state materials, supplies, services or equipment may be used for solicitation purposes other than activities authorized by an agency of the state for state-connected business or state-sponsored charitable purposes.

—(d) Any and all violations observed shall be reported immediately to Protective Services.

—(3) Permissible Solicitation Activities: The following kinds of solicitation activities may be allowed access to Capitol Hill Facilities:

—(a) Charitable campaigns (including blood drives, state United Way campaign, food banks, sub for Santa and other charitable activities).

—(b) Organized employee participation in sports activities representing their state agency or a charitable organization including departmental or charity competitive teams.

—(c) Announcements required by law or requested by a state agency in furtherance of official duties (including job announcements, EEO and OSHA notices).

—(d) Activities conducted at the direction of the head of a state agency.

—(e) Employees' sale of small craft items during breaks and lunch in employee lounges and break areas.

—(f) State employees may post handbills, leaflets, circulars, advertising or other printed materials on specifically designated bulletin boards regarding the offering or sale of personal items such as free kittens or bikes for sale, or personal announcements such as wedding announcements or ride share requests. This exemption does not apply to conducting a business (such as Tupperware or Amway sales).

—(g) Employee recognition events conducted by a state agency such as National Secretaries Week Luncheons which are approved by the supervisor of the employees affected.

#### **R131-2-9. Waiver.**

—Notwithstanding any requirement of these Capitol Hill Facility Use Rules, a waiver may be requested in writing by the applicant as to its necessity. The Capitol Preservation Board may disapprove the

waiver request. If so, the Board shall issue a written statement that the strict holding of the required provision would be unreasonable under the circumstances and that the provision is not needed to protect the facility, grounds or the public. The applicant has the burden to establish, in a clear and concise statement, that the waiver should be granted. The request for waiver shall be included as part of the Facility Use Application and must provide the necessary information and documentation to support such waiver. The decision of the Facilities Management group may be appealed to the Board, in a way similar to the appeal of the denial of a Facility Use Application.]

### **R131-2. Capitol Hill Complex Facility Use.**

#### **R131-2-1. Purpose and Application.**

(1) The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex.

(2) Except as expressly stated herein, or in rule R131-11, this rule R131-2 does not apply to free speech activities. Free speech activities conducted at the Capitol Hill Complex are governed by rule R131-11.

#### **R131-2-2. Authority.**

(1) The State Capitol Preservation Board adopts this Capitol Hill Complex Facility Use Rule pursuant to Section 63C-9-301.

#### **R131-2-3. Definitions.**

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street, and any other facilities and grounds owned by the state of Utah that are located within the immediate vicinity.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(6) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

(7) "Event" or "Events" are commercial, community service, private, and state sponsored activities involving five or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(8) "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

(9) "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

(10) "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

(11) "Free Speech Activity" is as defined in rule R131-11.

(12) "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

(13) "Solicitation" is as defined in rule R131-10.

(14) "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

(15) "State Sponsored Activity" means any event sponsored by the state that is related to state business.

#### **R131-2-4. Facility Use Permit - Application.**

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than 180 days before the date of the event. An applicant may only make one application for one continuous event at a time.

(2) The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide the following information:

(a) the applicant's organization's name, address, telephone and facsimile number;

(b) the names and addresses of the person(s) responsible for supervising the event during set up, take down, clean up and the duration of the event;

(c) the nature of the applicant; *i.e.* individual, business entity, governmental department or other;

(d) the name and address of the legally recognized agent for service of process;

(e) a specific description of the area of the facility and/or grounds being requested for use;

(f) the type of proposed activity and the number of anticipated participants;

(g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;

(h) a complete description of equipment and apparatus to be used for the event;

(i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

**R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.**

(1) Within five working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

(a) the application does not comply with the applicable rules;

(b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or

(c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten calendar days to the Board's Budget Development and Board Operations Subcommittee chair who will determine the process of the appeal.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The permittee may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 48 hours prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

**R131-2-6. General Requirements for Use of the Capitol Hill Complex.**

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Friday from 6:00 a.m. to 8:00 p.m., Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session or the conduct of any state business.

(e) Levels of audible sound generated by any individual or group, whether amplified or not, shall not exceed 85 decibels.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing, shall be at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of alcoholic beverages is prohibited.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(2) Decorations.

(a) All cords must be taped down with 3M(trademark) #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held. Signs or posters may not be on sticks or poles.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the outside of any facility or any portion of the grounds.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(b) Open flames, flammable fluids, candles, and explosives are prohibited.

(c) All persons must obey all applicable firearm laws, rules, and regulations.

(d) All activities, events or uses must comply with applicable fire codes and maximum occupancy restrictions.

(6) Security and Supervision.

(a) At least two uniformed security personnel shall be required for every 400 participants of an event (except free speech activities). Costs for such personnel shall be included as a part of the base fees paid by the sponsor (permit holder), unless a waiver is granted.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director for scheduling, if it is to be performed by a professional or is commercial in nature.

(b) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Food Services, Catering.

(a) Food services on the Capitol Hill Complex shall be provided by the Board's on-site food service provider. No other food service will be allowed within the facilities or on the grounds, except that the Utah Senate and Utah House of Representatives may obtain off-site food services for special events during legislative sessions. Any sale of food items shall be with advance written permission of the executive director only.

(b) Fees associated with food services shall be the responsibility of the user.

(10) Enforcement of Rules.

(a) If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state capitol security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the Capitol Hill Complex.

(11) Exemptions and Waivers.

(a) The executive director may waive the requirements of any provision of R131-2-6 upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Conditions may be placed on any approved waiver to assure the appropriate protection of facilities, grounds and person. An appeal of a denial of a request for such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

### **R131-2-7. Fees and Charges.**

(1) Use Fees.

(a) Persons using the Capitol Hill Complex pursuant to a Facility Use Permit may be charged a fee. A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. Additionally, fees may be assessed for technology

assistance, use of state equipment, recording, security, insurance coverage, cleaning and repairs. The Schedule of Costs and Fees may have special fees for community service activities, employee recognition events and holiday parties. There are no fees for free speech activities, but costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees.

(2) Waiver.

(a) Costs and fees shall be waived for state sponsored activities. However, state agencies will be required to pay the costs and fees identified in the Schedule of Costs and Fees when the activity is not required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties. Costs and fees will not be waived for commercial, private and solicitation activities.

#### **R131-2-8. Specific Facilities.**

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room in the Capitol building shall be available for use by elected officials. Food service in the Gold Room shall be only through the Board's on-site food service provider. Furniture in the Gold Room shall be gently used and protected and none of the furniture shall be moved or relocated in the room, except as approved by the executive director.

#### **R131-2-9. Use of White Community Memorial Chapel.**

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) Users may use the full rest room facilities and full kitchen facilities. Kitchen use includes electric stove, oven, refrigerator, double sinks, and work counter.

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) Intent to display, prepare, or consume food shall be communicated to the executive director on the Facility Use Application prior to issuance of the permit. Users shall treat the equipment with the utmost care and leave the equipment in its original condition after use.

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

#### **R131-2-10. Procedure for Receiving and Deciding Complaints Regarding the Access or Use of the Capitol Hill Complex.**

(1) Any person that has a complaint regarding the access or use of the Capitol Hill Complex may file such complaint in writing to the executive director.

(2) The executive director will issue a written determination within thirty calendar days of the filing of the complaint or such longer time period as agreed to by the complainant.

(3) If the executive director does not issue a determination within the time period for such determination, then the complainant may file a written appeal no later than ten calendar days after the expiration of such time period. The written appeal shall be delivered to the office of the executive director and shall be considered by the Board's Budget Development and Board Operations Subcommittee chair in a manner determined appropriate by the chair.

(4) The chair will issue a written determination within thirty calendar days of the filing of the appeal or such longer time period as agreed to by the complainant.

(5) If the chair does not issue a determination within the time period for the chair's determination, the complainant may file a written appeal to the Board no later than ten calendar days after the expiration of such time period. The written appeal to the Board shall be delivered to the office of the executive director.

(6) Upon the filing of a timely appeal to the Board, the appeal shall be scheduled at the next regularly scheduled meeting of the Board.

(7) This is considered to be an administrative remedy for complaints regarding the access or use of the Capitol Hill Complex, and to the extent allowed by law, shall be considered an administrative remedy that must be pursued prior to any legal action.

**KEY: public buildings, facilities use**

**Date of Enactment or Last Substantive Amendment: ~~March 13, 2000~~ 2006**

**Notice of Continuation: February 16, 2005**

**Authorizing, and Implemented or Interpreted Law: 63C-9-101 et seq.**



## Capitol Preservation Board (State), Administration **R131-10** Solicitations

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 28934

FILED: 08/15/2006, 23:44

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is promulgated pursuant to Section 63C-9-301 which directs the Board, except as provided in Subsection 63C-9-301(2), to exercise complete jurisdiction over the Capitol Hill Complex.

**SUMMARY OF THE RULE OR CHANGE:** This rule defines and implements Board policy regarding solicitation activities at the Utah State Capitol Hill Complex.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63C-9-301

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The provisions of the rule are limited to time, manner, and place provisions for solicitation activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.
- ❖ **LOCAL GOVERNMENTS:** The provisions of the rule are limited to time, manner, and place provisions for solicitation activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.
- ❖ **OTHER PERSONS:** The provisions of the rule are limited to time, manner, and place provisions for solicitation activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The provisions of the rule are limited to time, manner, and place provisions for solicitation activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.

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

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Sarah Whitney at the above address, by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at [swhitney@utah.gov](mailto:swhitney@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.**

**THIS RULE MAY BECOME EFFECTIVE ON:** 10/09/2006

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

**R131. Capitol Preservation Board (State), Administration.**

**R131-10. Solicitations.**

**R131-10-1. Purpose.**

(1) The purpose of this rule is to define and implement Board policy regarding solicitation activities at the Utah State Capitol Hill Complex. In general, commercial solicitation is not allowed; except as defined by this rule and as may be permitted by the management of the Capitol Hill Complex for functions that maintain public purposes, or that comport with interests of the state.

**R131-10-2. Authority.**

(1) This rule is promulgated pursuant to Section 63C-9-301, Utah Code, which directs the Board, except as provided in Subsection 63C-9-301(2), to exercise complete jurisdiction over the Capitol Hill Complex.

**R131-10-3. Definitions.**

(1) The definitions of rule R131-2-3 shall apply.

(2) The following definitions shall also apply:

(a) "Capitol Hill Complex Facility Use" means as defined in rule R131-2 et seq.

(b) "Solicitation(s)" means any activity conducted for the purpose of advertising, promoting, fund-raising, buying or selling any product or service, encouraging membership in any group, association or organization, or distributing handbills, leaflets, circulars, advertising or dispersing printed materials. "Solicitation" for the purpose of this rule does not include free speech activities as defined in rule R131-11, Utah Administrative Code. "Solicitation" for the purpose of this rule does not include filming or photographic activities, but such activities shall be subject to rule R131-2 et seq.

**R131-10-4. Solicitation Permit Not Required.**

(1) The following forms of solicitation are allowed on the Capitol Hill Complex in accordance with the requirements of rule R131-2, Utah Administrative Code. Solicitors described in R131-10-4 do not need to obtain a Facility Use Permit, but when posting notices, they shall only use bulletin boards which are approved by the Executive Director:

(a) Notices of on-Capitol Hill Complex meetings, information or announcements related to state or other governmental business. Notices shall be posted at locations within the buildings on the Capitol Hill Complex which have been approved by the Executive Director. If any posting is to be done by a person not officed in the Capitol Hill Complex, the Executive Director shall be notified prior to the posting for approval of the location(s) and duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex on designated bulletin boards approved by the Executive Director.

(c) Persons authorized to conduct governmental activities of the state including those soliciting pursuant to a contract with the state.

(d) Notices of activities conducted by elected officials of the state, the judiciary, the Governor's Office, the State Auditor's Office, the State Treasurer's Office, and the Attorney General's Office.

(e) Activities of lobbyists who are registered under state law.

(f) Information responding to a solicitation that has been requested by the state or if customarily associated with the conduct of official state business.

(g) Solicitation activities conducted in conjunction with on-Capitol Hill Complex state employees or on-Capitol Hill Complex agency fund-raising events as allowed under applicable law and personnel policies.

(h) Solicitations which are allowed on the Capitol Hill Complex as a matter of right under applicable constitutional provisions or applicable law.

#### **R131-10-5. Solicitations Requiring Permit.**

(1) The following solicitations may be permitted on the Capitol Hill Complex in accordance with the requirements of R131-2. Persons conducting these activities are required to obtain a Facility Use Permit under rule R131-2, and such permit shall be obtained in advance of the solicitation activity:

(a) Solicitation activities in conjunction with an activity that requires a Facility Use Permit under rule R131-2.

(b) Solicitation activities conducted by an entity which has previously obtained a Section 501(c)(3) Internal Revenue Code tax-exempt designation.

#### **R131-10-6. Prohibited Solicitation.**

(1) The following solicitation activities are prohibited on the Capitol Hill Complex:

(a) Door-to-door solicitations of items, services or donations unless any of such is related to the conduct of state business.

(b) Solicitations involving the exchange of currency on the Capitol Hill Complex except as allowed regarding state business, or pursuant to a contract or other written agreement.

(c) Solicitation to persons in vehicles or by leaving any solicitation materials on vehicles or parking lots.

(d) Any sale of food or beverage products except by an entity under contract with the Board. Any sale of other products may only occur as allowed under a contract with the Board or as an integral part of governmental business on the Capitol Hill Complex.

#### **R131-10-7. General Requirements.**

(1) All materials allowed shall be displayed only on bulletin boards or in areas that have been approved in advance by the Executive Director.

(2) With the exception of bulletin boards used in accordance with (1) above, no state owned materials, supplies, services or equipment may be used in conjunction with a solicitation activity, except for a state function, or joint state and private entity function authorized by an agency of the state and involving state related business or state sponsored purposes. This provision may be waived by the Executive Director when it is in the interest of the state and complies with applicable law.

(3) Handouts, flyers, leaflets or other such solicitation materials that are not related to state business may not be distributed during a solicitation activity except at the request of the recipient.

(4) There shall be no solicitation activity that involves an exchange of cash during an event or activity in the Capitol Hill Complex, unless it is related to state business or is authorized by the Executive Director.

(5) Unless expressly stated otherwise in writing by a state elected official or director of a state agency:

(a) The state does not guarantee the accuracy of any representation or warrant that any statement made by the solicitation permit-holder is truthful;

(b) The state makes no representation as to the worthiness, legal standing or validity of any organization on whose behalf a solicitation is made; and

(c) The issuance of a Facility Use Permit shall not be construed as state endorsement of the solicitor's product, service, charity or event.

(6) Unless the person responsible for the solicitation has an express written state endorsement of their solicitation, the person shall not state or act in any manner that would cause a reasonable person to believe that the solicitation is endorsed by the state. If a reasonable person could logically conclude that such appearance is created, the solicitation must include a disclaimer that the solicitation is not endorsed by the state.

(7) Unless the person responsible for the solicitation has an express written state endorsement of their solicitation, any advertisements that use pictures of, or depictions of any part of the Capitol Hill Complex that may lead people to reasonably believe that the state endorses the solicitation, must include a disclaimer that the state does not endorse the solicitation.

(8) Soliciting activities are subject to all littering laws and regulations.

(9) Separate soliciting activities undertaken by those under contract with the state or pursuant to a Facility Use Permit, including entities such as gift shops, food services, and special event photographers, shall be conducted in accordance with the specific contract or Facility Use Permit.

#### **KEY: solicitations, leafleting, posting notices**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 63C-9-301**

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## Capitol Preservation Board (State), Administration **R131-11** Free Speech Activities

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 28933

FILED: 08/15/2006, 23:35

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is promulgated pursuant to Section 63C-9-301 which directs the Board, except as provided in Subsection 63C-9-301(2), to exercise complete jurisdiction over the Capitol Hill Complex, which includes providing for the public use of the Capitol Hill Complex for free speech activities.

SUMMARY OF THE RULE OR CHANGE: This rule defines and implements Board policy regarding free speech activities at the Utah State Capitol Hill Complex.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-301

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The provisions of the rule are limited to time, manner, and place provisions for free speech activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.

❖ LOCAL GOVERNMENTS: The provisions of the rule are limited to time, manner, and place provisions for free speech activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.

❖ OTHER PERSONS: The provisions of the rule are limited to time, manner, and place provisions for free speech activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The provisions of the rule are limited to time, manner, and place provisions for free speech activities. There are no cost related activities, such as purchase of permits or bonds, or the payment of fees, provided for in the rule.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sarah Whitney at the above address, by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at [swhitney@utah.gov](mailto:swhitney@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/09/2006

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

**R131. Capitol Preservation Board (State), Administration.**

**R131-11. Free Speech Activities.**

**R131-11-1. Purpose.**

(1) The purpose of this rule is to:  
(a) provide for the public use of the Capitol Hill Complex for free speech activities;

(b) facilitate public assembly and communication between people at the Capitol Hill Complex;

(c) designate areas of the Capitol Hill Complex open to the public for free speech activities; and

(d) establish guidelines to accommodate free speech activities and public assembly on the Capitol Hill Complex.

(2) This rule is intended to further the following governmental interests:

(a) to accommodate and establish guidelines for free speech activities on the Capitol Hill Complex;

(b) to minimize disruption to or interruption of the conduct of state business;

(c) to maintain unobstructed and efficient flow of pedestrian and vehicular traffic between and within the Capitol Hill Complex;

(d) to control littering, damage to, and vandalism of the Capitol Hill Complex and control noise and other disruptive impacts on the performance of state business; and

(e) to ensure the health, safety, and welfare of all persons visiting or using the Capitol Hill Complex.

**R131-11-2. Authority.**

(1) This rule is adopted pursuant to the authority granted to the Board under Section 63C-9-301. The executive director may adopt policies and procedures to implement this rule.

**R131-11-3. Definitions.**

The definitions of rule R131-2-3 shall apply to this rule R131-11. In addition, the following definitions shall apply:

(1) "Free Speech Activity" means an event held by a person or group in the exercise of protected freedom of speech, freedom of assembly, or other First Amendment protections at the Capitol Hill Complex, including demonstrations, rallies, leafleting, press conferences, speeches, debates, vigils, parades, and marches. The terms "solicitation" and "events" as defined in R131-2-3 are not free speech activities.

(2) "Leafleting" means the unsolicited distribution of leaflets, handbills, pamphlets, flyers or any other written materials to pedestrians, passers by or on vehicles.

(3) "Public Free Speech Areas" means those locations of the Capitol Hill Complex which are open to the public for free speech activities. Public free speech areas are:

(a) the Capitol Hill Grounds;

(b) the south grand staircase, south, east and west terraces of the Capitol;

(c) the east and west entrances to the Capitol;

(d) the Capitol Rotunda;

(e) those areas of the main public foyers of the House and Senate buildings delineated on "Map A" on file with the office of the Board dated September 1, 2006 and incorporated herein by reference; and

(f) the plaza between the House and Senate buildings.

(4) Areas of the Capitol Hill Complex not expressly designated in this rule and on "Map A" are not public free speech areas.

**R131-11-4. Time, Place, and Manner of Free Speech Activities.**

(1) General. The time, place, and manner of free speech activities may be limited for public health, safety, welfare and security reasons and to further the interests stated in R131-11-1.

(a) Free speech activities on the Capitol Hill Complex may only be conducted in the public free speech areas.

(b) Free speech activities shall be subject to the general requirements of R131-2-6, except that, in the case of conflict, the provisions of this rule R131-11 shall control.

(c) In general, public assembly and free speech activities shall conform to all applicable laws and requirements, including health, safety, fire, building and other codes or limitations.

(d) Occupancy limits as posted in or applicable to public free speech areas will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public free speech areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(e) Safety requirements as used in this rule R131-11-4(1) include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(2) Time and Place.

(a) Free speech activities held outdoors may take place at the public free speech areas of the Capitol Hill Grounds between the hours of 7:00 a.m. and 11:00 p.m. daily.

(i) In addition to times listed in subsection (2)(a) above, free speech activities may be held on the Capitol Hill Grounds concurrent with after hour government action, such as stay of execution or commutation proceedings and legislative meetings. Such after hour free speech activities must end at the conclusion of the concurrent government proceeding.

(b) Free speech activities held indoors may take place in the public free speech areas during the hours such public free speech areas are open to the public, generally between 8:00 a.m. to 6:00 p.m., during after hour legislative sessions, and during committee and agency meetings until such sessions or meetings are adjourned.

(c) In order to accommodate as many groups as may make requests to conduct free speech activities on a given day, a free speech activity in a given public free speech area may be limited to two hours when necessary to accommodate another pre-scheduled group in the same public free speech area.

(i) The number of groups or participants on the plaza may be limited when necessary to comply with occupancy limits, fire, safety, and health codes, and applicable security requirements;

(3) Manner.

(a) General Requirements. The provisions of rule R131-2-6 which apply to all persons using the Capitol Hill Complex including state officers, legislators, and employees, also apply to persons and groups participating in free speech activities, except that, in the case of conflict, the provisions of this rule R131-11 shall control.

(b) Registration and Scheduling.

(i) Public free speech areas may be scheduled for free speech activities up to 14 calendar days in advance of the free speech activity by registering with the executive director's office or online at <http://www.utahstatecapitol.utah.gov>.

(ii) Persons registering will provide the following information: the name of the sponsoring organization; the name and contact information of a contact person or agent; the type of free speech activity; the date, time and duration of the free speech activity; the public free speech area requested for use; the number of anticipated participants; and a list of equipment and services to be used in connection with the free speech activity. Registration shall be on a form prepared by the executive director.

(iii) If a person or group fails to register due to the spontaneous nature of the free speech activity, they may still conduct the free

speech activity provided it does not interfere with the time and location of a previously scheduled free speech activity in the same public free speech area and meets all the other requirements of this rule.

(c) Priority.

(i) The scheduling assignment of public free speech areas shall be made on a first-come, first-serve basis.

(ii) In the case of scheduling conflicts, first priority in the use of the public free speech areas shall be given to government business and state sponsored activities. Free speech activities shall be given priority over community service, commercial and private activities. In case of a scheduling conflict, the executive director shall provide alternative times and locations for the proposed activity to the extent reasonably feasible.

(iii) No group or individual will be denied access to or use of a public free speech area unless the proposed free speech activity violates this rule, applicable law, conflicts with a scheduled state sponsored activity, or conflicts with the time and location of a previously scheduled free speech activity.

(d) Leafleting.

(i) Leafleting is allowed in public free speech areas.

(ii) Leafleting is not allowed by placing leaflets on vehicles.

(e) Noise. All indoor free speech activities and those held on the plaza must maintain noise levels not exceeding 85 decibels or a more restrictive limit established by applicable laws or ordinances.

(f) Law Enforcement. All free speech activities shall comply with applicable state and federal laws and regulations and with applicable Salt Lake City ordinances. Law enforcement and State Capitol security personnel may intercede to enforce said laws, to prevent injury to persons and property, and to further the interests stated in rule R131-11-1.

**R131-11-5. Indemnification.**

(1) Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of free speech activities on the Capitol Hill Complex.

**KEY: free speech activities, leafleting**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 63C-9-301**



Commerce, Occupational and  
Professional Licensing  
**R156-39a**  
Alternative Dispute Resolution  
Providers Certification Act Rules

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28923

FILED: 08/14/2006, 17:02

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division has been evaluating the need for each profession's law/rule examination and has determined that the law/rule examination for applicants for certification as an alternative dispute resolution provider (ADRP) can be deleted with no negative impact on the profession.

SUMMARY OF THE RULE OR CHANGE: In Section R156-39a-103, updated statutory citation. In Section R156-39a-302c, deleted reference to ADRP Utah Law and Rule Examination.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-39a-1 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately \$75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed amendments only apply to applicants for certification as an ADRP.

❖ OTHER PERSONS: Proposed amendments only apply to applicants for certification as an ADRP. Those applicants for certification will see a savings of \$75 in that they will no longer be required to take the Utah ADRP Law and Rule Examination. The Division estimates approximately three new ADRPs are certified on a yearly basis, thus resulting in an aggregate savings of \$225. It should be noted however, that any testing agency which the Division has contracted with to give the law/rule examination will see a decrease in the examination fees noted above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Proposed amendments only apply to applicants for certification as an ADRP. Those applicants for certification will see a savings of \$75 in that they will no longer be required to take the ADRP Utah Law and Rule Examination. It should be noted however that any testing agency which the Division has contracted with to give the law/rule examination will see a decrease in the examination fees noted above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The regulated industry will experience a cost-savings as a result of the elimination of the Utah Law and Rule Examination. No further fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Daniel T. Jones at the above address, by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at dantjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2006

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-39a. Alternative Dispute Resolution Providers Certification Act Rules.**

**R156-39a-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 39a.

~~[R156-39a-302c. Qualifications for Certification - Examination Requirement.~~

~~— In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirement for certification in Section 58-1-309 is defined, clarified, or established to include passing of the ADRP Utah law and rules examination.~~

**[KEY: licensing, arbitration, mediation, alternative dispute resolution]**

**Date of Enactment or Last Substantive Amendment: [1994]2006**  
**Notice of Continuation: January 27, 2004**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-39a-1**

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Commerce, Occupational and  
Professional Licensing  
**R156-55c**  
Construction Trades Licensing Act  
Plumber Licensing Rules

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 28916  
FILED: 08/07/2006, 18:15

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division, Construction Services Commission, and the Plumbers Licensing Board are proposing amendments to the rule which they believe are necessary and reflect the current needs of the plumbing industry and the public.

**SUMMARY OF THE RULE OR CHANGE:** Various statute citations are corrected throughout the rule. Section R156-55c-302b has been deleted. Section R156-55c-302c has been renumbered to Section R156-55c-302b. Numerous amendments have been made in this section to add flexibility to the training and instruction work process hours identified in Tables I and II. The work process hours identified in Tables I and II have been changed from approximate to minimum hours and the total number of hours in each table have been reduced. Also, Table I work experience hours can now be obtained in seven of the nine work process areas and Table II work experience hours can now be obtained in six of the eight work process areas. Amendments being added as Subsection R156-55c-302b(6)(c) will change the supervising ratio on commercial type work to two apprentice plumbers for each journeyman plumber. This proposed amendment will make the ratio the same for both commercial and residential type work. Section R156-55c-302d has been renumbered to Section R156-55c-302c. Amendments are proposed in this section to more clearly state the requirements of the section. Section R156-55c-307 has been renumbered to Section R156-55c-304. In Section R156-55c-501, amendments are proposed in this section to more clearly define what type of conduct is considered unprofessional conduct and Subsection R156-55c-501(6) is being added to indicate that failure as a plumbing contractor to certify an apprentice's hours when requested by an apprentice who is or has been employee of the plumbing contractor is considered unprofessional conduct. Sections R156-55c-601 and R156-55c-602 have been deleted in their entirety as the information contained in these two sections has been incorporated into amendments proposed in Section R156-55c-302b. Section R156-55c-701 has been renumbered to Section R156-55c-601.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-55-101 and Subsections 58-5-106(1)(a) and 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any costs incurred by the Division will be absorbed in the Division's current budget. The proposed amendments regarding the supervisory ratio between apprentice and journeyman plumbers would reduce labor costs. Contractors, however, have recently experienced shortages in labor and significant increases in the costs of building materials. It is anticipated there would be no direct impact on the state's budget because any savings involving state construction projects would most likely be lost due to cost increases in building materials. The enforcement of an employer not certifying an apprentice's hours would be a state/Division responsibility. However, there is an expectation that this proposed amendment in the rule would rarely be used.

❖ **LOCAL GOVERNMENTS:** There should be no direct impact on the budgets of local governments as a result of these proposed amendments. This would also be due to the fact that any savings in construction projects involving cities would most likely be lost due to increases in the cost of building materials.

❖ **OTHER PERSONS:** There should be no negative impact to the public as a result of the proposed amendments. The proposed amendments are expected to help ease the current shortage of apprentice plumbers. The perception is that the change to the supervisory ratio between apprentices and journeymen is safe and a workable solution to the problem. However, it is unlikely the public will see any financial savings to this change in the ratio due to increases in the cost of building materials. Also, plumbing contractors involved in commercial work would experience a reduction in the cost of labor due to the supervisory ratio amendments. However, the Division is unable to determine an exact number of the savings due to numerous factors which could influence those potential savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments are expected to help ease the current shortage of apprentice plumbers. Also, plumbing contractors involved in commercial work would experience a reduction in the cost of labor. It is surmised the amendment making it unprofessional conduct for a plumbing contractor not to certify an apprentice's hours would have little to no impact on the industry. A similar provision in the rules regarding electricians has rarely been used against a contractor but has proven to be a valuable tool in assisting apprentices who have left employment with one employer and gone to work for another employer.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** It is anticipated the plumbing industry will experience a cost-savings due to the amendments which allow two apprentices for each supervising plumber. No further fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dennis Meservy at the above address, by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at [dmeservy@utah.gov](mailto:dmeservy@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 9/27/2006 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2006

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-55c. Construction Trades Licensing Act Plumber  
Licensing Rules.**

**R156-55c-102. Definitions.**

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

- (1) "Board" means the Plumbers Licensing Board.
- (2) "Plumber" means apprentice plumber, residential apprentice plumber, journeyman plumber, and residential journeyman plumber.
- (3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(~~1~~)(e), in Subsection R156-55c-501.

**R156-55c-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 55.

**~~R156-55c-302b. Qualifications for Licensure - Apprenticeship Education.~~**

~~In accordance with Subsections 58-1-203(2) and 58-1-301(3), the apprenticeship education requirements for licensure in Subsection 58-55-302(3)(a) and (b) are defined, clarified, or established as follows:~~

- ~~(1) a journeyman plumber applicant seeking licensure under training and instruction requirements set forth in Subsection R156-55c-302e(1)(a) shall demonstrate successful completion of not less than 576 clock hours of classroom instruction in an apprenticeship program meeting the requirements of Section R156-55c-601; and~~
- ~~(2) a residential journeyman plumber applicant seeking licensure under training and instruction requirements set forth in Subsection R156-55c-302e(2)(a) shall demonstrate successful completion of not less than 432 hours of classroom instruction in an apprenticeship program meeting the requirements of Section R156-55c-601.~~

**~~R156-55c-302[e]b. Qualification for Licensure - Training and Instruction Requirement.~~**

~~In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(a) and (b) are defined, clarified, or established as follows:~~

- ~~(1) An applicant for a journeyman plumber's license [applicant] shall demonstrate successful completion of the requirements of either paragraph (a) or (b):~~
  - ~~(a)(i) 8,000 hours of training and instruction[;] in not less than four years that meets the requirements of Subsections R156-55c-302b(4) and (6)[;] while licensed as an apprentice plumber, completed in an apprenticeship program of training meeting the requirements of Section R156-55c-601, in the following experience areas and approximate number of hours as identified in Table I; or~~
  - ~~(b) 16,000 hours of experience, in not less than eight years, as a plumber under the supervision of a journeyman plumber with a minimum number of hours of experience in each of the experience areas required under Subsection (1)(a).]~~

~~(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);~~

~~(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber or residential apprentice plumber;~~

~~(iv) the apprenticeship shall include on the job training and instruction in seven of the nine work process areas listed in Table I; and~~

~~(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.~~

~~(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;~~

~~(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;~~

~~(iii) the hours shall include on the job training and instruction in seven of the nine work process areas listed in Table I; and~~

~~(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.~~

TABLE I  
Training and Instruction

Work Process	[Approximate] Minimum Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer [vent-] and [leader] vent lines	[2,250] 2,000
C. Installation of hot and cold water for domestic purposes	[1,600] 1,400
D. Installation and setting of plumbing appliances and fixtures	[1,600] 1,400
E. Maintenance and repair of plumbing	[800] 600
F. General pipe work including process and industrial hours	[800] 600
G. Gas piping or service piping	[500] 400
H. Welding, soldering and brazing as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	[200] 100

~~(2) An applicant for a residential journeyman plumber's license [applicant] shall demonstrate successful completion of the requirements of paragraph (a) or (b):~~

~~(a)(i) 6,000 hours of training and instruction[;] in not less than three years[;] while licensed as an apprentice plumber or residential apprentice plumber, completed an apprenticeship program of training meeting the requirements of Section R156-55c-601, in the following experience areas and approximate number of hours as identified in Table II; or] that meets the requirements of Subsections R156-55c-302b(4) and (6).~~

~~(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);~~

~~(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber or residential apprentice plumber;~~

~~(iv) the apprenticeship shall include on the job training and instruction in six of the seven work process areas listed in Table II; and~~

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience[-] in not less than six years[-] in a maintenance or repair trade for which the applicant can document that not less than 75% of the work performed was directly involved in the plumbing trade including as a minimum the number of hours performing work in each of the experience areas required under Subsection (2)(a)-] which has been documented using a form provided by the division;

(ii) the experience shall be obtained while licensed as an apprentice plumber or residential apprentice plumber;

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in six of the eight work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II  
Training and Instruction

Work Process	[Approximate] Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer [ <del>vent</del> ] and [ <del>header</del> ] vent lines	[ <del>1,800</del> ] 1,600
C. Installation of hot and cold water for domestic purposes	[ <del>1,400</del> ] 1,200
D. Installation and setting of plumbing appliances and fixtures	[ <del>1,200</del> ] 1,000
E. Maintenance and repair of plumbing	[ <del>800</del> ] 600
F. Gas piping or service piping	[ <del>500</del> ] 400
G. Service and maintenance of gas controls and equipment	[ <del>200</del> ] 100
H. Welding, soldering and brazing as it applies to the trade	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license [must]shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber or residential apprentice plumber, which shall include successful completion of [and complete] an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Board of Regents or by another entity that demonstrates to the division and board that it conducts equivalent classroom instruction; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers and residential apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(c)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber or residential apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

**R156-55c-302[d]c. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The [examination which must be passed and the minimum score required on each examination for licensure as a journeyman plumber and residential journeyman plumber is]applicant shall obtain a score of 70% on the Utah Plumbers Licensing Examination which shall consist[s] of a written section and practical section[with a minimum score of 70% on each section].

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55c-302a, R156-55c-302b and R156-55c-302c.

(3) An examinee who passes one section of the Utah Plumbers Licensing Examination and fails the other section shall be required to retake and pass only the section failed.

(4) An examinee who fails either or both sections of the Utah Plumbers Licensing Examination two times shall not be permitted to retake the examination until:

(a) the examinee [meets with the board and the board outlines a required]completes a remedial program of education of one semester of school for each test section failed twice; or[or experience of up to one year in length which must be completed before the examinee may again take the examination; and]

(b) the examinee meets with the Board and completes an alternate remedial program outlined by the Board[successfully completes the required remedial program of education or experience].

(c) [Upon completion of]After completing the required remedial program[-of education and experience], the examinee shall retake the failed portions of the examination a maximum of two times of the next two examinations offered.

(d) Failure to pass [both required]the failed portions of the examination upon retake shall result in denial of the[re] application for licensure. An applicant continuing to seek licensure [must]shall reapply for licensure by filing a new application with the required fee and may do so only after completing additional remedial education and experience as determined by the division and the board.

**R156-55c-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308a.

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

**R156-55c-~~307~~304. Licensure by Endorsement.**

In accordance with the provisions of Section 58-1-302, the division may issue an individual a license as an apprentice plumber, residential apprentice plumber, journeyman plumber, or residential journeyman plumber by endorsement, in accordance with the following:

(1) An applicant for licensure by endorsement as a journeyman plumber or residential journeyman plumber has the burden to demonstrate that the apprenticeship instruction and training, or experience requirements in lieu of an apprenticeship, and the examination requirements of the state or jurisdiction in which the applicant holds licensure are equal to the requirement of this state or were equal to the requirements of this state at the time the applicant received licensure in the other state.

(2) An applicant for licensure as an apprentice or apprentice residential plumber who has completed part of apprenticeship training and instruction in another jurisdiction has the burden to demonstrate that the apprenticeship program in the other state is equivalent to an approved apprenticeship program in this state as a condition of the applicant being given credit for completion of an apprenticeship program in another state.

**R156-55c-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) engaging in the plumbing trade as an apprentice plumber or residential apprentice plumber on a commercial or industrial project when not under the immediate supervision of a journeyman plumber~~], or a residential apprentice plumber when not under the general supervision of a licensed journeyman plumber or residential journeyman plumber~~];

(2) engaging in the plumbing trade as an apprentice plumber or as a residential apprentice plumber on a residential project when not under the immediate supervision of a residential journeyman or journeyman plumber, except as provided in Subsection 58-55-302(3)(c)(ii)]~~except in accordance with instructions of the supervising journeyman or residential journeyman plumber~~];

(3) [acting as a journeyman plumber or residential journeyman plumber on residential projects when supervising more than two apprentice plumbers or residential apprentice plumbers, or a combination of them, and one unlicensed assistant]~~engaging in the plumbing trade as an apprentice plumber except in accordance with instructions of the supervising plumber~~];

(4) acting as a journeyman plumber or residential journeyman plumber while supervising more than two apprentice plumbers~~on industrial or commercial projects when supervising more than one apprentice plumber and one unlicensed assistant; and]~~

(5) failure as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the division or any law enforcement officer; and

(6) failure as a plumbing contractor to certify an apprentice's hours when requested by an apprentice who is or has been an employee of the plumbing contractor.

**[R156-55c-601. Qualifications for Approval of Apprenticeship Program.**

~~An apprenticeship program qualifying an applicant for licensure as a journeyman plumber or residential journeyman plumber to meet the education requirements for licensure under Section R156-55c-302b and the training and instruction~~

~~requirements for licensure under Section R156-55c-302e shall meet the following:~~

~~— (1) Formal classroom instruction shall be:~~

~~— (a) conducted by Local Education Agency (LEA), or by some other entity which demonstrates to the division and board that it conducts classroom instruction equivalent to that of a LEA;~~

~~— (b) conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice; and~~

~~— (c) meet the following minimum required hours of classroom instruction:~~

~~— (i) apprentice plumber classroom instruction of not less than 576 clock hours; and~~

~~— (ii) residential apprentice plumber classroom instruction of not less than 432 clock hours.~~

~~— (2) Training and instruction shall:~~

~~— (a) be under the immediate supervision of a licensed journeyman plumber for an apprentice plumber or under the immediate supervision of a licensed journeyman plumber or residential journeyman plumber for a residential apprentice plumber;~~

~~— (b) include measurements of an apprentice's performance of work in all experience areas set forth in Table I for apprentices preparing for a journeyman plumbers license, or measurements of an apprentice's performance of work in all experience areas set forth in Table II for apprentices preparing for a residential journeyman plumbers license; and~~

~~— (c) meet the following minimum hours of training and instruction:~~

~~— (i) apprentice plumber training and instruction of not less than 8,000 hours in not less than four years in work areas defined in Table I; and~~

~~— (ii) residential apprentice plumber training and instruction of not less than 6,000 hours in not less than three years in work areas defined in Table II.~~

**R156-55c-602. Supervision of Apprentices and Unlicensed Assistants.**

~~— (1) Apprentice plumbers shall engage in plumbing only in accordance with the following:~~

~~— (a) while engaging in the trade of plumbing, an apprentice plumber shall be under the immediate supervision of a licensed journeyman plumber;~~

~~— (b) while engaging in the trade of plumbing, a residential apprentice plumber shall be under the immediate supervision of a licensed journeyman plumber or residential journeyman plumber;~~

~~— (c) the apprentice shall engage in plumbing in accordance with the instruction of the supervising journeyman plumber; and~~

~~— (d) an apprentice shall work under a supervising journeyman plumber on commercial or industrial plumbing jobs in a ratio not to exceed one apprentice plumber to one supervising journeyman plumber, and on residential plumbing jobs in a ratio not to exceed two apprentice plumbers to one supervising journeyman plumber.~~

~~— (2) Residential apprentice plumbers shall engage in plumbing only under a supervising journeyman plumber or residential journeyman plumber on residential plumbing jobs in a ratio not to exceed two residential apprentice plumbers to one supervising journeyman plumber.~~

~~— (3) A supervising journeyman plumber or residential journeyman plumber may supervise in addition to apprentice plumbers or residential apprentice plumbers in accordance with~~

~~Subsections (1) and (2), one unlicensed plumbing assistant who is not engaged in the trade of plumbing.~~

**]R156-55c-[701]601. Proof of Licensure.**

Each apprentice, residential apprentice, residential journeyman and journeyman plumber shall:

(1) carry on his person or in close proximity to his person his current license when he is engaged in the plumbing trade; and

(2) display his license to a representative of the division or any law enforcement officer upon request.

**KEY: occupational licensing, licensing, plumbers[~~z~~], plumbing[~~z~~]**

**Date of Enactment or Last Substantive Amendment:**  
~~September 4, 2001~~ 2006

**Notice of Continuation:** January 7, 2002

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101

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Commerce, Occupational and  
Professional Licensing

**R156-70a**

Physician Assistant Practice Act Rules

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 28924

FILED: 08/14/2006, 17:53

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and the Physician Assistant Licensing Board are proposing amendments to the rule to add additional continuing education programs that would meet criteria for obtaining 40 hours of required continuing education during every 2-year licensure cycle.

**SUMMARY OF THE RULE OR CHANGE:** In Sections R156-70a-103 and R156-70a-104, statutory and rule citations are corrected. In Section R156-70a-304, amendments are added that continuing professional education hours can now be obtained through approved programs sponsored by the American Academy of Physician Assistants (AAPA) and programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant. These additional programs are in addition to Category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME) which is already in the rule.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-70a-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed amendments only apply to licensed physician assistants.

❖ **OTHER PERSONS:** Proposed amendments only apply to licensed physician assistants of which there are currently 545.

The Division anticipates there will be some savings to licensed physician assistants as a result of the proposed amendments since licensees will have greater access to continuing education programs in-state; they may attend AAPA meetings or other healthcare related meetings for continuing education credits rather than just category 1 medical education courses which tend to be more expensive. The Division is unable to determine how much savings each licensed physician assistant might realize due to the varying types of courses and costs.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Proposed amendments only apply to licensed physician assistants. The Division anticipates there will be some savings to licensed physician assistants as a result of the proposed amendments since licensees will have greater access to continuing education programs in-state; they may attend AAPA meetings or other healthcare related meetings for continuing education credits rather than just Category 1 medical education courses which tend to be more expensive. The Division is unable to determine how much savings each licensed physician assistant might realize due to the varying types of courses and costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The regulated industry could experience a cost-savings as a result of additional options for continuing education. No other fiscal impact to businesses is anticipated as a result of these amendments. Francine A. Giani, Executive Director

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2006

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.**

**R156-70a. Physician Assistant Practice Act Rules.**

**R156-70a-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 70a.

**R156-70a-104. Organization - Relationship to Rule R156-1.**

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

**R156-70a-304. Continuing Education.**

In accordance with Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE) are as follows:

(1) CPE shall consist of 40 hours in each preceding two year licensure cycle in:

(a) category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME); [~~in each preceding two year licensure cycle.~~]

(b) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(c) programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant.

(2) [~~Offerings or courses must be approved by institutions accredited by the ACCME to approve continuing medical education.~~]

(3) If requested, the licensee shall provide documentation of completed qualified continuing professional education by any of the following means:

(a) certificates from sponsoring agencies;

(b) transcripts of participation on applicable institutions letterhead; or

(c) copy of current national certification by NCCPA.

(4) Continuing professional education for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

(5) A licensee shall be responsible for maintaining competent records of completed continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to continuing professional education and to demonstrate it meets the requirements under this section.

**KEY: licensing, physician assistants**

**Date of Enactment or Last Substantive Amendment:** ~~November 15, 2001~~ 2006

**Notice of Continuation:** May 2, 2002

**Authorizing, and Implemented or Interpreted Law:** 58-70a-101; 58-1-106(1)(a); 58-1-202(1)(a)

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**Commerce, Occupational and  
Professional Licensing  
R156-72  
Acupuncture Licensing Act Rules**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28913

FILED: 08/07/2006, 10:49

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division has been evaluating the need for each profession's law/rule examination and has determined that the law/rule examination for applicants for licensure as an acupuncturist can be deleted with no negative impact on the profession. Also, the Division is proposing amendments to implement statute changes made during the 2006 legislative session in H.B. 284 with respect to the practice of acupuncture on animals. (DAR NOTE: H.B. 284 (2006) is found at Chapter 109, Laws of Utah 2006, and was effective 05/01/2006.)

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-72-103, updated statutory citation. In Section R156-72-302a, deleted reference to Utah Law and Rules Examination and added clarifying information that the examination required in Subsection 58-72-302(5) is the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) certification examinations. Added Section R156-72-302b regarding animal acupuncture education and training requirements and updated previous Section R156-72-302b to Section R156-72-302c.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-72-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed amendments only apply to potential licensees as an acupuncturist and licensed acupuncturists who desire to practice acupuncture on animals.

❖ **OTHER PERSONS:** Proposed amendments only apply to applicants for licensure as an acupuncturist. Those applicants for licensure will see a savings of \$75 in that they will no longer be required to take the Utah Law and Rules Examination. The Division estimates approximately eight new acupuncturists are licensed on a yearly basis, thus resulting in an aggregate savings of \$600. It should be noted however that any testing agency which the Division has contracted with to give the law/rule examination will see a decrease in the examination fees noted above. Also, licensed acupuncturists who are interested in pursuing animal acupuncture qualifications will have to pay costs associated with gaining

the education and training required to perform such services. The Division does not have specific costs with respect to gaining the required 100 hours of education and training as it could vary greatly depending where the education and training is completed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Proposed amendments only apply to applicants for licensure as an acupuncturist. Those applicants for licensure will see a savings of \$75 in that they will no longer be required to take the Utah Law and Rules Examination. It should be noted however that any testing agency which the Division has contracted with to give the law/rule examination will see a decrease in the examination fees noted above. Also, licensed acupuncturists who are interested in pursuing animal acupuncture qualifications will have to pay costs associated with gaining the education and training required to perform such services. The Division does not have specific costs with respect to gaining the required 100 hours of education and training as it could vary greatly depending where the education and training is completed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The regulated industry will experience a cost-savings as a result of the elimination of the Utah Law and Rules Examination. No fiscal impact to businesses is anticipated as to the amendments regarding the practice of acupuncture on animals, which was previously addressed by the Legislature in passing the authorizing statute. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Noel Taxin at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 9/27/2006 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 402, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2006

AUTHORIZED BY: J. Craig Jackson, Director

## **R156. Commerce, Occupational and Professional Licensing.**

### **R156-72. Acupuncture Licensing Act Rules.**

#### **R156-72-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 72.

#### **R156-72-302a. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM, formerly National Commission for the Certification of Acupuncturists (NCCA), in acupuncture or oriental medicine. [required is the Utah Law and Rules Examination for Acupuncturists with a passing score of at least 75 percent.]

#### **R156-72-302b. Qualifications for Licensure - Animal Acupuncture.**

In accordance with Subsections 58-28-307(12)(d) and 58-72-102(4)(a)(iii), a licensed acupuncturist practicing animal acupuncture must complete 100 hours of animal acupuncture training and education. The training and education shall include:

- (1) completing 50 hours of on the job training under the supervision of a licensed veterinarian;
- (2) completing animal anatomy training; and
- (3) completing the remaining hours in animal specific continuing education.

#### **R156-72-302[b]c. Informed Consent.**

In accordance with Subsection 58-72-302(6), in order for patients to give informed consent to treatment, an acupuncturist shall have a patient chart for each patient which shall include:

- (1) a written review of symptoms; and
- (2) a statement, signed by that patient, that consent is given to provide acupuncture treatment.

#### **KEY: acupuncture, licensing**

**Date of Enactment or Last Substantive Amendment:** ~~July 7, 1998~~ 2006

**Notice of Continuation:** April 8, 2002

**Authorizing, and Implemented or Interpreted Law:** 58-72-101; 58-1-106(1)(a); 58-1-202(1)(a)

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## Environmental Quality, Radiation Control **R313-12-3** Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28929

FILED: 08/15/2006, 16:42

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Two definitions have been removed from this rule that are no longer needed. One definition has had typographical changes.

SUMMARY OF THE RULE OR CHANGE: The terms "calendar quarter" and "waste collector licensees" are no longer applicable under Title R313, so the corresponding definitions have been deleted from Section R313-12-3. Some minor punctuation changes have been made to the definition for "bioassay".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-104 and 19-3-108

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There should be no fiscal impact as there are no regulatory changes added and no implementation requirements.
- ❖ LOCAL GOVERNMENTS: There should be no fiscal impact as there are no regulatory changes added and no implementation requirements.
- ❖ OTHER PERSONS: There should be no fiscal impact as there are no regulatory changes added and no implementation requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs will be incurred due to the nature of the change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses due to the deletion of two definitions. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY  
RADIATION CONTROL  
Room 212  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Hogge at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at dhogge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/20/2006

AUTHORIZED BY: Dane Finerfrock, Director

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**R313. Environmental Quality, Radiation Control.****R313-12. General Provisions.****R313-12-3. Definitions.**

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced material" means a material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement[?] (in vivo counting)[?] or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

~~"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of the year shall begin in January, and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. The method observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.~~

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

.....

"Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

(a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and

(b) classified by the U.S. Nuclear Regulatory Commission as low-level radioactive waste consistent with existing law and in accordance with (a) above.

~~"Waste collector licensees" means persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.~~

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

**KEY: definitions, units, inspections, exemptions**

**Date of Enactment or Last Substantive Amendment:** ~~May 13, 2005~~ **2006**

**Notice of Continuation:** July 10, 2006

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-3-108



## Environmental Quality, Radiation Control **R313-14** Violations and Escalated Enforcement

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28930

FILED: 08/15/2006, 16:43

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was updated to add a statement describing the agency authority to promulgate these rules. Another example to the types of orders that may be issued was also added.

SUMMARY OF THE RULE OR CHANGE: Subsection R313-14-1(3) was added to show that the Executive Secretary is authorized by statute to issue violation(s) and escalate enforcement actions.

Subsection R313-14-15(3)(a) has been modified to reflect that the issuance of a civil penalty is included as a type of order.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-3-103.5(1)(d), 19-3-104(4), and 19-3-104(8); and Sections 19-3-108, 19-3-109, and 19-3-111

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There should be no fiscal impact, as the changes do not add additional enforcement processes.
- ❖ LOCAL GOVERNMENTS: There should be no fiscal impact to local governments that hold a radioactive materials license, because the regulatory changes do not add additional enforcement processes.
- ❖ OTHER PERSONS: There should be no fiscal impact as the nature of these changes only includes a statement of authority allowed by existing statute and an additional example of an enforcement order.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The addition of a statement that describes statutory authority and another example for a type of order does not create additional costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule would not have any fiscal impact on businesses as it does not change or add additional enforcement processes. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY  
 RADIATION CONTROL  
 Room 212  
 168 N 1950 W  
 SALT LAKE CITY UT 84116-3085, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Hogge at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at dhogge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/20/2006

AUTHORIZED BY: Dane Finerfrock, Director

**R313. Environmental Quality, Radiation Control.**

**R313-14. Violations and Escalated Enforcement.**

**R313-14-1. Introduction, [and] Purpose, and Authority.**

(1) The purpose of the radiation control inspection and compliance program is to assure the radiological safety of the public, radiation workers, and the environment by:

- (a) ensuring compliance with Utah Radiation Control rules or license conditions;
- (b) obtaining prompt correction of violations;
- (c) deterring future violations; and
- (d) encouraging improvement of licensee, permittee or registrant performance, including the prompt identification, reporting, and correction of potential safety problems.

(2) Consistent with the purpose of the radiation control inspection and compliance program, prompt and vigorous enforcement action shall be taken when dealing with licensees, permittees or registrants who fail to demonstrate adherence to these rules. Enforcement action is dependent on the circumstances of the case and may require that discretion be exercised after consideration of these standards. Sanctions have been designed to ensure that a licensee, permittee or registrant does not deliberately profit from violations of the Utah Radiation Control rules.

(3) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-103.5(1)(d), 19-3-104(4) and 19-3-104(8), 19-3-108, 19-3-109, and 19-3-111.

**R313-14-15. Enforcement Actions.**

This Section describes the enforcement sanctions available to the Executive Secretary and specifies the conditions under which they are to be used.

.....

(3) Orders.

(a) An Order is a written directive to modify, suspend, or revoke a license, permit or registration; to cease and desist from a given practice or activity; to issue a civil penalty; or to take other action that may be necessary.

(b) Modification Orders are issued when some change in licensee, permittee or registrant equipment, procedures or management control is necessary.

(c) Suspension Orders may be used:

- (i) to remove a threat to the public health and safety or the environment;
- (ii) when the licensee, permittee or registrant has not responded adequately to other enforcement action;
- (iii) when the licensee, permittee or registrant interferes with the conduct of an inspection; or
- (iv) for a reason not mentioned above for which license, permit or registration revocation is authorized.

(v) Suspensions may apply to all or part of the regulated activity. Ordinarily, an activity is not suspended, nor is a suspension prolonged for failure to comply with requirements when the failure is not willful or when adequate corrective actions have been taken.

(d) Revocation Orders may be used:

- (i) when a licensee, permittee or registrant is unable or unwilling to comply with these rules;
- (ii) when a licensee, permittee or registrant refuses to correct a violation;
- (iii) when a licensee, permittee or registrant does not respond to a Notice of Violation;
- (iv) when a licensee, permittee or registrant does not pay a fee required by the Department; or
- (v) for any other reason for which revocation is authorized.

(e) Cease and Desist Orders are used to stop unauthorized activity that has continued despite notification by the Executive Secretary that the activity is unauthorized.

(f) Orders may be made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the Order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing is afforded. For cases in which a basis could reasonably exist for not taking the action as proposed, the licensee, permittee or

registrant shall be afforded an opportunity to show cause why the Order should not be issued in the proposed manner.

(4) Escalation of Enforcement Sanctions.

(a) In accordance with the provisions of Section 19-3-111 the radioactive material of a person may be impounded. Administrative procedures will be conducted as provided by R313-14-20, prior to disposal of impounded radioactive materials.

(b) Violations of Severity Levels I, II or III are considered to be very serious. If repetitive very serious violations occur, the Executive Secretary may issue Orders in conjunction with other enforcement actions to achieve immediate corrective actions and to deter their recurrence. In accordance with the criteria contained in this section, the Executive Secretary shall carefully consider the circumstances of cases when selecting and applying the appropriate sanctions.

(c) The progression of enforcement actions for repetitive violations may be based on violations under a single license, permit or registration. The actual progression to be used in a particular case may depend on the circumstances. When more than one facility is covered by a single license, permit or registration, the normal progression may be based on repetitive violations under the same license, permit or registration. It should be noted that under some circumstances, for example, where there is common control over some facet of facility operations, repetitive violations may be charged even though the second violation occurred at a different facility or under a different license, permit or registration.

(5) Related Administrative Actions.

(a) In addition to the formal enforcement mechanisms of Notices of Violation and Orders, the Executive Secretary may use administrative mechanisms, like enforcement conferences, bulletins, circulars, information notices, generic letters, and confirmatory action letters as part of the enforcement and regulatory program. Licensees, permittees and registrants are expected to adhere to obligations and commitments resulting from these processes and the Executive Secretary shall, if necessary, issue appropriate orders to make sure that expectation is realized.

(b) Enforcement Conferences are meetings held by the Executive Secretary with licensee, permittee or registrant management to discuss safety, public health, or environmental problems, compliance with regulatory requirements, proposed corrective measures, including schedules for implementation, and enforcement options available to the Executive Secretary.

(c) Bulletins, Circulars, Information Notices, and Generic Letters are written notifications to groups of licensees, permittees or registrants identifying specific problems and calling for or recommending specific actions on their part. Responses to these notifications may be required.

(d) Confirmatory Action Letters are letters confirming a licensee's, permittee's or registrant's agreement to take certain actions to remove significant concerns about health and safety, or the environment.

**KEY: violations, penalties, enforcement**

**Date of Enactment or Last Substantive Amendment:** ~~June 8, 2004~~ **2006**

**Notice of Continuation:** July 10, 2006

**Authorizing, and Implemented or Interpreted Law:** 19-3-109; 19-3-111



## Environmental Quality, Radiation Control **R313-16** General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28931

FILED: 08/15/2006, 16:46

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule has been amended to reflect a legislative change in the authorizing statute (S.B. 24 (2005)), adds an authorization citation for a "Qualified Expert", and removes a requirement that has expired. (DAR NOTE: S.B. 24 (2005) is found at Chapter 10, Laws of Utah 2005, and was effective 02/25/2005.)

**SUMMARY OF THE RULE OR CHANGE:** The following changes are made: 1) one update to the authorizing statute has been made; 2) an authority statement has been added for a "Qualified Expert" and 3) a requirement that linear accelerator users register by 07/01/1999 has expired and has been removed.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-3-104

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There should be no fiscal impact to the state budget as there are no regulatory changes added and no implementation requirements.

❖ **LOCAL GOVERNMENTS:** There should be no fiscal impact to local government, as there are no regulatory changes added and no implementation requirements.

❖ **OTHER PERSONS:** There should be no fiscal impact to other persons, as there are no regulatory changes added and no implementation requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There should be no fiscal impact to affected persons as there are no regulatory changes added and no implementation requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will not have fiscal impact on businesses because there are no regulatory changes and no implementation requirements. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY  
RADIATION CONTROL  
Room 212

168 N 1950 W  
SALT LAKE CITY UT 84116-3085, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
David Hogge at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at dhogge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/20/2006

AUTHORIZED BY: Dane Finerfrock, Director

**R313. Environmental Quality, Radiation Control.**  
**R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.**  
**R313-16-200. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation. This rule provides for the registration of individuals providing inspection services to a facility where one or more radiation machines are installed or located.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104~~(3)~~(4) and 19-3-104~~(8)(a)~~(10).

**R313-16-231. Additional Requirements for the Issuance of a Registration for Particle Accelerators Excluding Therapeutic Radiation Machines (See Rule R313-30).**

(1) In addition to the requirements of Section R313-16-230, a registrant who proposes to use a particle accelerator shall submit an application to the Executive Secretary containing the following:

(a) information demonstrating that the applicant, by reason of training and experience, is qualified to use the accelerator in question for the purpose requested in a manner that will minimize danger to public health and safety or the environment;

(b) a discussion which demonstrates that the applicant's equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or the environment;

(c) the name and qualifications of the individual, appointed by the applicant, to serve as radiation safety officer pursuant to Section R313-35-140;

(d) a description of the applicant's or the staff's experience in the use of particle accelerators and radiation safety training; and

(e) a description of the radiation safety training the applicant will provide to particle accelerator operators. ]

~~—(2) Registrants who possess and use a particle accelerator that has been registered with the Department prior to January 1, 1999 shall submit a registration application that contains the information in Subsections R313-16-231(1)(a) through (e). The application shall be submitted by July 1, 1999.]~~

**KEY: x-ray, inspections**

**Date of Enactment or Last Substantive Amendment:** ~~August 12, 2005~~2006

**Notice of Continuation:** July 10, 2006

**Authorizing, and Implemented or Interpreted Law:** 19-3-104

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## Environmental Quality, Radiation Control **R313-22** Specific Licenses

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 28922

FILED: 08/14/2006, 15:04

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is in regards to the requirements for financial assurance for decommissioning of facilities with certain quantities of radioactive materials. Additional requirements to the rule have been added, and base amounts for funding have increased. Old date references have been removed, and references to the Code of Federal Regulations and to a Nuclear Regulatory Commission document have been updated.

SUMMARY OF THE RULE OR CHANGE: New requirements are added to require licensees possessing sealed sources above a certain quantity to submit a decommissioning funding plan, and to require waste collectors and waste processors to provide financial assurance based on a decommissioning funding plan. Cost estimates for decommissioning will be adjusted at intervals not to exceed three years. The base amounts for financial assurance for decommissioning in Subsection R313-22-35(4) are increased. A reference to the Nuclear Regulatory Commission's guidance document regarding financial assurance for decommissioning is updated. References to past due dates in several rules are removed, and references to incorporated sections of the Code of Federal Regulations are updated.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-3-104 and 19-3-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 10 CFR 20 (2006); 10 CFR 30 (2006); 10 CFR 32 (2006); 10 CFR 40 (2006); 10 CFR 70 (2006); 40 CFR 320 (2005); and NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003)

## ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The purpose of requiring certain radioactive materials licensees to submit funding plans for financial assurance for decommissioning is to relieve the citizens of Utah from the financial burden of cleaning up locations of radioactive material use should the licensee be unable to do so. The only savings to be realized from this rule would be if an affected licensee needed to decommission its facility, and would not have had sufficient funds to do so if this rule had not been enacted. The savings are based on a hypothetical situation, and therefore, do not represent any actual savings. The cost of decommissioning a facility could run from several thousands to hundreds of thousands of dollars.

❖ **LOCAL GOVERNMENTS:** No costs or savings are anticipated for local government since none of the affected licensees is an entity of local government.

❖ **OTHER PERSONS:** No costs or savings are anticipated for persons other than for those licensees described in "Compliance costs for affected persons."

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is anticipated that only three current licensees will be seriously affected by this rule amendment. The licensees will either have to provide a decommissioning funding plan and describe the funding mechanism they will use to provide financial assurance for decommissioning, or amend their license to limit the amount of radioactive material to be possessed such that financial assurance for decommissioning is not required. The cost to the licensees would be the time and effort to develop the funding plan or the amendment to their license and submit it to the Division for approval, and the cost to finance the funding mechanism, if necessary. The dollar amount will depend on the licensees' decommissioning cost estimate, and the time and expense incurred by the licensees during the submission process. The only other cost to affected licensees who currently have financial assurance for decommissioning would be the time and effort expended in reviewing the adequacy of their funding plans every 3 years instead of during their license renewals (every 5 years). The actual costs would depend on how much time each licensee spends in reviewing its funding plan, and how much more funding would be needed for increased costs for decommissioning. The increased costs for decommissioning should not be any more than a licensee would have during the funding plan review done every five years during license renewal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Three licensees in the State will have to have financial assurance for decommissioning that have not had to provide it in the past. Two licensees are private businesses, and one is a State entity. The State entity and one of the private businesses might avoid the need for financial assurance for decommissioning by changing the amounts of radioactive material allowed on their license to below the level where financial assurance is required. If all three licensees need to have financial assurance for decommissioning, the cost to these licensees could be several thousands to hundreds of thousands of dollars. The licensees have the option of submitting a cost estimate reflecting the actual costs involved in decontaminating and

decommissioning their facilities, or using the appropriate fixed dollar amount in the Rule. One licensee will be required by the rule changes to submit a cost estimate for decontamination and decommissioning of its facility. The funding for the State entity would be through a guarantee that the necessary funds would be available from the State.  
Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY  
RADIATION CONTROL  
Room 212  
168 N 1950 W  
SALT LAKE CITY UT 84116-3085, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Philip Griffin at the above address, by phone at 801-536-4261, by FAX at 801-533-4097, or by Internet E-mail at pgriffin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/20/2006

AUTHORIZED BY: Dane Finerfrock, Director

### **R313. Environmental Quality, Radiation Control.**

#### **R313-22. Specific Licenses.**

##### **R313-22-32. Filing Application for Specific Licenses.**

(1) Applications for specific licenses shall be filed on a form prescribed by the Executive Secretary.

(2) The Executive Secretary may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Executive Secretary to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Executive Secretary, provided the references are clear and specific.

(6) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall identify the source or device by manufacturer and model number as registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210, [2004]2006 ed. or the equivalent regulations of an Agreement State.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted

before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Executive Secretary; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Executive Secretary immediately after notification

of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, [2000]2005 ed.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Executive Secretary.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Executive Secretary. The licensee shall provide any comments received within the 60 days to the Executive Secretary with the emergency plan.

### **R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.**

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding  $10^5$  times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, [2004]2006 ed., which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if  $R$  divided by  $10^5$  is greater than one, where  $R$  is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of

10 CFR 30.1 through 30.72, [2004]2006 ed., which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding  $10^{12}$  times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2006 ed., which is incorporated by reference, or when a combination of isotopes is involved if R, as defined in Subsection R313-22-35(1)(a), divided by  $10^{12}$  is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Executive Secretary before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Executive Secretary, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after [January 1, 1995]October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before [January 1, 1995]October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit[~~on or before January 1, 1995,~~] by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to [~~\$750,000~~]\$1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before [January 1, 1995]October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit[~~on or before January 1, 1995,~~] by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for

decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before [January 1, 1995]October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2). [~~This assurance shall be submitted before January 1, 1997.~~]

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, 2006 ed., which is incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(g), shall submit a decommissioning funding plan to the Executive Secretary on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(g), shall submit a decommissioning funding plan to the Executive Secretary as a part of the license application.

([e]g) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Executive Secretary for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document [NUREG-1727, "NMSS Decommissioning Standard Review Plan" (9/2000)]NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

([f]h) Documents provided to the Executive Secretary under Subsection R313-22-35(3)([e]g) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.[-]

TABLE

Greater than  $10^6$  but less than or equal to  $10^9$  times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, [2004]2006 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by  $10^6$  is greater than one but R divided by  $10^9$  is less than or equal to one:

Greater than  $10^3$  but less than or equal to  $10^4$  times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72,

[~~\$750,000~~]\$1,125,000

[2004]2006 ed., which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10<sup>3</sup> is greater than one but R divided by 10<sup>4</sup> is less than or equal to one: [~~\$150,000~~] \$225,000

Greater than 10<sup>10</sup> but less than or equal to 10<sup>12</sup> times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72, [2004]2006 ed., which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10<sup>10</sup> is greater than one, but R divided by 10<sup>12</sup> is less than or equal to one: [~~\$75,000~~] \$113,000

(5) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates shall be adjusted at intervals not to exceed 3 years. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).

.....

**R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.**

(1) Licensing the introduction of radioactive material into products in exempt concentrations.

(a) In addition to the requirements set forth in Section R313-22-33, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under Subsection R313-19-13(2)(a) will be issued if:

(i) the applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioactive material in the product or material at the time of transfer; and

(ii) the applicant provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in Section R313-19-70, that reconcentration of the radioactive material in concentrations exceeding those in Section R313-19-70 is not likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to a human being.

(b) Persons licensed under Subsection R313-22-75(1) shall file an annual report with the Executive Secretary which shall identify the type and quantity of products or materials into which radioactive material has been introduced during the reporting period; name and address of

the person who owned or possessed the product and material, into which radioactive material has been introduced, at the time of introduction; the type and quantity of radionuclide introduced into the product or material; and the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(1) during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within thirty days thereafter.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) An application for a specific license to distribute naturally occurring and accelerator-produced radioactive material (NARM) to persons exempted from these rules pursuant to Subsection R313-19-13(2)(b) will be approved if:

(i) the radioactive material is not contained in a food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

(ii) the radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and

(iii) the applicant submits copies of prototype labels and brochures and the Executive Secretary approves the labels and brochures;

(b) The license issued under Subsection R313-22-75(2)(a) is subject to the following conditions:

(i) No more than ten exempt quantities shall be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantities provided the sum of the fractions shall not exceed unity.

(ii) Exempt quantities shall be separated and individually packaged. No more than ten packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to Subsection R313-19-13(2)(b). The outer package shall not allow the dose rate at the external surface of the package to exceed 5.0 microsievert (0.5 mrem) per hour.

(iii) The immediate container of a quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

(A) identifies the radionuclide and the quantity of radioactivity; and

(B) bears the words "Radioactive Material."

(iv) In addition to the labeling information required by Subsection R313-22-75(2)(b)(iii), the label affixed to the immediate container, or an accompanying brochure, shall:

(A) state that the contents are exempt from Licensing State requirements;

(B) bear the words "Radioactive Material - Not for Human Use - Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined;" and

(C) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(c) Persons licensed under Subsection R313-22-75(2) shall maintain records identifying, by name and address, persons to whom radioactive material is transferred for use under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of radionuclides transferred under the specific license shall be filed with the Executive Secretary. Reports shall cover the year ending June 30, and shall be filed within thirty days thereafter. If no transfers of radioactive material have been made pursuant to Subsection R313-22-75(2) during the reporting period, the report shall so indicate.

(3) Licensing the incorporation of naturally occurring and accelerator-produced radioactive material (NARM) into gas and aerosol detectors. An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under Subsection R313-19-13(2)(c)(iii) will be approved if the application satisfies requirements equivalent to those contained in 10 CFR 32.26, [2004]2006 ed. The maximum quantity of radium-226 in each device shall not exceed 3.7 kilobecquerel (0.1 mCi).

.....

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 and 32.101, [2004]2006 ed., or their equivalent.

(6) Special requirements for license to manufacture calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, 32.102 and 10 CFR 70.39, [2004]2006 ed., or their equivalent.

.....

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 32.103, [2004]2006 ed. are met.

.....

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Executive Secretary will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Executive Secretary may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission

or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Executive Secretary all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25, [~~2004~~2006 ed.;

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

#### **R313-22-210. Registration of Product Information.**

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210, [~~2004~~2006 ed. or equivalent regulations of an Agreement State.

**KEY: specific licenses, decommissioning, broad scope, radioactive materials**

**Date of Enactment or Last Substantive Amendment:** [~~May 13, 2005~~2006

**Notice of Continuation:** October 10, 2001

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-3-108



## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-200-3**

#### Services Available

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 28911

FILED: 08/03/2006, 14:56

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rulemaking eliminates dental coverage for those with Non-Traditional Medicaid coverage.

**SUMMARY OF THE RULE OR CHANGE:** The change deletes the list of dental services in Subsection R414-200-3(3)(v) and inserts the phrase "not covered". (DAR NOTE: A corresponding 120-day (emergency) rule was published in the June 1, 2006, issue of the Bulletin under DAR No. 28879 and was effective as of 07/13/2006.)

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

#### **ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The state will save \$656,000 in state dollars and \$1,544,000 in federal matching funds will not be drawn down.

❖ **LOCAL GOVERNMENTS:** No local government dollars are involved because there is no local government funding through the Non-Traditional Medicaid dental program.

❖ **OTHER PERSONS:** Aggregate reimbursements not paid to dental providers will be approximately \$2,200,000. Assuming the affected Non-Traditional Medicaid clients would seek and receive dental care and pay regular prices, they would have to spend up to \$4,400,000.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Approximately 690 dental providers are losing \$3,188 per year because of this rulemaking. Approximately 23,000 Non-Traditional Medicaid clients may have to pay up to \$191 per year for dental care.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is necessary to stay within appropriations approved by the Legislature. Loss of Medicaid benefits will impact both the recipients of this service and providers. David N. Sundwall, M.D., Executive Director

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2006

AUTHORIZED BY: Richard Melton, Deputy Director

#### **R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

##### **R414-200. Non-Traditional Medicaid Health Plan Services.**

##### **R414-200-3. Services Available.**

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the NTHP.

(a) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(3) The following services, as more fully described and limited in provider contracts and provider manuals; are available to Non-Traditional Medicaid Health Plan enrollees:

(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;

(b) outpatient hospital services which are medically necessary diagnostic, therapeutic, preventive, or palliative care provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;

(c) emergency services in dedicated hospital emergency departments;

(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of the physician or osteopath.

(e) services associated with surgery or administration of anesthesia provided by physicians or licensed certified nurse anesthetists;

(f) vision care services by licensed ophthalmologists or licensed optometrists, within their scope of practice; limited to one annual eye examination or refraction and no eyeglasses.

(g) laboratory and radiology services provided by licensed and certified providers;

(h) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to ten aggregated physical or occupational therapy visits per calendar year;

(i) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;

(j) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;

(k) hospice services provided by a Medicare-certified hospice to terminally ill enrollees (six month or less life expectancy) who elect palliative versus aggressive care;

(l) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;

(m) certain organ transplants;

(n) services provided in freestanding emergency centers, surgical centers and birthing centers;

(o) transportation services, limited to ambulance (ground and air) service for medical emergencies;

(p) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;

(q) family planning services provided by or authorized by a physician, certified nurse midwife, or nurse practitioner to the extent permitted by federal and state law;

(r) pharmacy services provided by a licensed pharmacy;

(s) inpatient mental health services, limited to 30 days per enrollee per calendar year;

(t) outpatient mental health services, limited to 30 visits per enrollee per calendar year;

(u) outpatient substance abuse services;

(v) dental services [~~limited to exams, x-rays, cleaning, fillings, and extractions~~] are not covered.

(w) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;

(x) occupational therapy, limited to that provided for fine motor development and limited to ten aggregated physical or occupational therapy visits per calendar year; and

(y) chiropractic services, limited to six visits per calendar year.

(4) Emergency services are:

(a) limited to attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

- (d) not related to an organ transplant procedure.  
 (5) The vision care benefit is limited to \$30 per year.

**KEY: Medicaid, non-traditional, cost sharing**

**Date of Enactment or Last Substantive Amendment:** ~~October 1, 2005~~ **2006**

**Authorizing, and Implemented or Interpreted Law:** 26-18

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**Health, Health Care Financing,  
 Coverage and Reimbursement Policy**  
**R414-320**  
**Medicaid Health Insurance Flexibility  
 and Accountability Demonstration  
 Waiver**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 28921

FILED: 08/14/2006, 12:51

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rulemaking is necessary to implement a Section 1115 demonstration program awarded to the Utah Department of Health which will increase the number of individuals with health insurance coverage. This waiver, funded in part by H.B. 276 which was passed by the 2006 State Legislature, will allow the Department to pool funding from the Primary Care Network and the Children's Health Insurance Program with personal and employer funds so that families and individuals can purchase health insurance through their employer. (DAR NOTE: H.B. 276 (2006) is found at Chapter 148, Laws of Utah 2006, and was effective 05/01/2006.)

**SUMMARY OF THE RULE OR CHANGE:** This is a new rule that describes the eligibility requirements for enrollment and the benefits individuals will receive through the demonstration program.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsections 26-18-3 and 26-1-5

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The Department anticipates enrolling 1,000 adults and approximately 250 children. Therefore, the Department anticipates spending approximately \$540,000 for adults and \$80,000 for children, for a total impact on the state budget of \$620,000.

❖ **LOCAL GOVERNMENTS:** This rule will not affect local government because all funds come from the state and/or federal governments.

❖ **OTHER PERSONS:** This rule will reduce the amount of funds that hospitals currently pay for uncompensated care, and the amount uninsured individuals currently pay for their medical expenses. However, the Department does not have data as to the aggregate costs for these expenses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule requires no affirmative compliance by any person. New enrollees will be positively impacted.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** A Section 1115 demonstration program waiver to Medicaid requirements is intended to increase the number of individuals with health insurance coverage using private insurance rather than expanding existing government programs. This waiver funded in part by H.B. 276 (2006) which will allow the Department to pool funding from the Primary Care Network and the Children's Health Insurance Program with personal and employer funds so that families and individuals can purchase private health insurance through their employer. This rule establishes the eligibility requirements and should have a positive impact on business. A. Richard Melton, Acting Executive Director

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

HEALTH  
 HEALTH CARE FINANCING,  
 COVERAGE AND REIMBURSEMENT POLICY  
 CANNON HEALTH BLDG  
 288 N 1460 W  
 SALT LAKE CITY UT 84116-3231, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at [rmartin@utah.gov](mailto:rmartin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2006

AUTHORIZED BY: Richard Melton, Deputy Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.**

**R414-320-1. Authority.**

This rule is authorized by Utah Code Title 26, Chapter 18. The Health Insurance Flexibility and Accountability (HIFA) Demonstration is authorized by a waiver of federal Medicaid and SCHIP requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the HIFA Demonstration.

**R414-320-2. Definitions.**

The following definitions apply throughout this rule:

(1) "Adult" means an individual who is at least 19 and not yet 65 years of age.

(2) "Applicant" means an individual who applies for benefits under the HIFA program, but who is not an enrollee.

(3) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Child" means an individual who is younger than 19 years of age.

(5) "Children's Health Insurance Program" or "CHIP" provides medical services for children under age 19 who do not otherwise qualify for Medicaid.

(6) "Department" means the Utah Department of Health.

(7) "Enrollee" means an individual who has applied for and been found eligible for the HIFA program.

(8) "Employer-sponsored health plan" means a health insurance plan offered through an employer where:

(a) the employer contributes at least 50 percent of the cost of the health insurance premium of the employee;

(b) coverage includes at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations;

(c) lifetime maximum benefits are at least \$1,000,000;

(d) the deductible is no more than \$1,000 per individual; and

(e) the plan pays at least 70% of an inpatient stay after the deductible.

(9) "HIFA" Health Insurance Flexibility and Accountability program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

(10) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(11) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(14) "Open enrollment" means a time period during which the Department accepts applications for the HIFA program.

(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.

(16) "Primary Care Network" or "PCN" program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid.

(17) "Recertification month" means the last month of the eligibility period for an enrollee.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

### **R414-320-3. Applicant and Enrollee Rights and Responsibilities.**

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) Adults with children under age 19 living in the home;

(b) Adults without children under age 19 living in the home;

(c) Adults enrolled in the PCN program;

(d) Children enrolled in the CHIP program;

(e) Adults or children who were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(f) Other groups designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the HIFA program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan.

(b) An enrollee changes health insurance plans.

(c) An enrollee has a change in the amount of the premium they are paying for an employer-sponsored health insurance plan.

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System.

(e) An enrollee has a change in the amount the enrollee pays for coverage under an employer-sponsored health plan.

(f) An enrollee leaves the household or dies.

(g) An enrollee or the household moves out of state.

(h) Change of address of an enrollee or the household.

(i) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan to be eligible for benefits.

(11) Eligible children may choose to enroll in their employer-sponsored health insurance plan and receive HIFA benefits, or they may choose direct coverage through the Children's Health Insurance Program.

**R414-320-4. General Eligibility Requirements.**

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to adult applicants and enrollees.

(2) The provisions of R382-10-6, R382-10-7, and R382-10-9 apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 or R382-10-6 is not eligible for any services or benefits under the HIFA program.

(4) Applicants and enrollees for the HIFA program are not required to provide Duty of Support information. An adult who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the HIFA program.

(5) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the HIFA program if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-320-15. If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the HIFA program.

**R414-320-5. Verification and Information Exchange.**

(1) The applicant and enrollee must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department safeguards information about applicants and enrollees.

(4) There are no provisions for taxpayers to see any information from client records.

(5) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information release cannot include information obtained through an income match system.

**R414-320-6. Residents of Institutions.**

(1) Residents of public institutions are not eligible for the HIFA program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

**R414-320-7. Creditable Health Coverage.**

(1) The Department adopts 42 CFR 433.138(b), 2005 ed., which are incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), at the time of application is eligible for enrollment if they have been enrolled for less than 60 days at the time of application.

(3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage does not exceed 5% of the household's gross income, the individual is not eligible for the HIFA program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in the HIFA program or may choose direct coverage through the Primary Care Network program if enrollment has not been stopped under the provisions of R414-310-16.

(c) A child may choose enrollment in HIFA or direct coverage under the CHIP program if the cost of the employer sponsored coverage is more than 5% of the household's gross income.

(d) An individual is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the HIFA program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the HIFA program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the HIFA program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the HIFA program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the state Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the HIFA program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by the Indian Health Services may enroll in the HIFA program.

(8) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, Medicare Part A or B, or the VA Health Care System.

(9) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify.

**R414-320-8. Household Composition.**

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the HIFA program:

(a) The individual;

(b) The individual's spouse living with the individual;

(c) All children of the individual or the individual's spouse who are under age 19 and living with the individual; and

(d) An unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

**R414-320-9. Age Requirement.**

(1) An individual must be younger than 65 years of age to enroll in the HIFA program.

(2) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the HIFA program.

**R414-320-10. Income Provisions.**

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(4) Any income in a trust that is available to, or is received by a household member, is countable income.

(5) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(6) Rental income is countable income. The following expenses can be deducted:

(a) Taxes and attorney fees needed to make the income available;

(b) Upkeep and repair costs necessary to maintain the current value of the property;

(c) Utility costs only if they are paid by the owner; and

(d) Interest only on a loan or mortgage secured by the rental property.

(7) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(8) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(9) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(10) Child support payments received for a dependent child living in the home are counted as that child's income.

(11) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(12) Supplemental Security Income and State Supplemental payments are countable income.

(13) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(14) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(15) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(16) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(17) Child Care Assistance under Title XX is not countable income.

(18) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(19) Earned and unearned income of a child is not countable income if the child is not the head of a household.

(20) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(21) Reimbursements for employee work expenses incurred by an individual are not countable income.

(22) The value of food stamp assistance is not countable income.

**R414-320-11. Budgeting.**

This section describes methods that the Department uses to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of the applicant or enrollee, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department multiplies the weekly amount by 4.3 to obtain a monthly amount. The Department multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The Department prorates income that is received less often than monthly over the certification period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. The Department may use different methods for different types of income received in the same household.

(5) The Department determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from the most recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may

exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

#### **R414-320-12. Assets.**

There is no asset test for eligibility in the HIFA program.

#### **R414-320-13. Application Procedure.**

(1) The application is the initial request from an applicant for HIFA enrollment. The application process includes gathering information and verifications to determine the individual's eligibility for enrollment.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the HIFA program.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the HIFA program. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The date of application will be decided as follows:

(a) The date the Department receives a completed, signed application is the application date when the application is delivered to a local office.

(b) The date postmarked on the envelope is the application date when a completed, signed application is mailed to the agency.

(c) The date the Department receives a completed, signed application via facsimile transfer is the application day. The agency accepts the signed application sent via facsimile as a valid application and does not require it to be signed again.

(d) The transaction date is the application date when the application is submitted online.

(4) If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

(5) The Department shall reinstate a HIFA case without requiring a new application if the case was closed in error.

(6) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) If the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) The individual continues to meet all eligibility requirements.

(7) An applicant may withdraw an application any time before the Department completes an eligibility decision on the application.

(8) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.

(a) Benefits for the new household member will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new income test is not required to add the new household member for the months remaining in the current certification period.

(c) A new household member may be added only if the Department has not stopped enrollment under section R414-320-15.

(d) Income of the new member will be considered at the next scheduled recertification.

(9) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in HIFA without waiting for the next open enrollment period.

(10) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in HIFA without waiting for the next open enrollment period.

(11) A new child born to or adopted by an enrollee may be enrolled in HIFA without waiting for the next open enrollment period.

#### **R414-320-14. Eligibility Decisions and Recertification.**

(1) The Department adopts 42 CFR 435.911 and 435.912, 2004 ed., which are incorporated by reference.

(2) When an individual applies for HIFA, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the HIFA program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the HIFA program if it is an open enrollment period and the individual meets all the applicable criteria for eligibility. If the HIFA program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the HIFA program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet the eligibility criteria for enrollment and it must be a time when the Department has not stopped enrollment under section R414-320-15. An applicant must be able to enroll in his or her employer-sponsored health insurance by the end of the month following the application month to be eligible. Otherwise,

eligibility will be denied, and the individual may reapply during another open enrollment period.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) The applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) The applicant died; or

(c) The applicant cannot be located; or

(d) The applicant has not responded to requests for information within the 30 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification and continues to meet all eligibility criteria, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

#### **R414-320-15. Effective Date of Enrollment and Enrollment Period.**

(1) The effective date of enrollment is the day that a completed and signed application or an on-line application is received by the local office and the applicant meets all eligibility criteria. The Department shall not provide any benefits before the effective enrollment date.

(2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium for the employer-sponsored health insurance. The applicant must enroll in the employer-sponsored health insurance no later than the end of the month following the month the application is received.

(c) If the applicant cannot enroll in the employer-sponsored health insurance by the end of the month immediately following the application month, the application shall be denied and the individual will have to reapply during another open enrollment period.

(3) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

(4) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

(5) If the enrollee does not complete the recertification as described in R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(6) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns age 65;

(b) The individual becomes entitled to receive Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) The individual dies;

(d) The individual moves out of state or cannot be located;

(e) The individual enters a public institution or an Institute for Mental Disease.

(7) If an adult enrollee discontinues enrollment in employer-sponsored insurance coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily and the individual notifies the local office within 10 calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

(8) A child enrollee may discontinue employer-sponsored health insurance and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

(9) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan may switch to the HIFA program if the individual reports to the local office within 10 calendar days of enrolling in an employer-sponsored plan.

(10) If a HIFA case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(11) If a HIFA case closes because the enrollee is eligible for another Medicaid program or the Children's Health Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application, meet eligibility and income

guidelines, and pay a new enrollment fee for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

**R414-320-16. Open Enrollment Period.**

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(2) The Department may stop enrollment of new individuals at any time based on availability of funds.

(3) The Department and local offices shall not accept applications nor maintain waiting lists during a time period that enrollment of new individuals is stopped.

**R414-320-17. Notice and Termination.**

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The Department shall terminate an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The Department shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.

(4) The Department shall notify an enrollee in writing at least ten days before taking a proposed action adversely affecting the enrollee's eligibility. Notices shall provide the following information:

(a) The action to be taken;

(b) The reason for the action;

(c) The regulations or policy that support the action;

(d) The applicant's or enrollee's right to a hearing;

(e) How an applicant or enrollee may request a hearing;

(f) The applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The Department need not give ten-day notice of termination if:

(a) The enrollee is deceased;

(b) The enrollee has moved out of state and is not expected to return;

(c) The enrollee has entered a public institution or institution for mental disease;

(d) The enrollee has enrolled in other health insurance coverage, in which case eligibility may cease immediately and without prior notice.

**R414-320-18. Improper Medical Coverage.**

(1) An individual who receives benefits under the HIFA program for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) An alien and the alien's sponsor are jointly liable for benefits received for which the individual was not eligible.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a time period that the enrollee was not actually eligible to receive such benefits.

**R414-320-19. Benefits.**

(1) The HIFA program provides cash reimbursement to enrollees as described in this section.

(2) The reimbursement shall not exceed the amount the employee pays toward the cost of the employer-sponsored coverage.

(3) The amount of reimbursement for an adult will be up to \$150 per month per individual.

(4) The amount of reimbursement for children will be up to \$100 per month per child for medical and an additional \$20 if they choose to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, the children may receive cash reimbursement up to \$100 for the medical insurance cost and enroll in direct dental coverage under the CHIP Program.

(b) When the employer-sponsored insurance includes dental, the applicant will be given the choice of enrolling the children in the employer-sponsored dental and receiving reimbursement up to \$20, or enrolling in direct dental coverage through the CHIP Program.

**KEY: Medicaid, PCN, CHIP**

**Date of Enactment of Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5**



Health, Health Systems Improvement,  
Licensing  
**R432-2-6**  
Application

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28909

FILED: 08/02/2006, 12:30

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended because of a time-limited freeze on processing of certain applications for Nursing Care Facilities received after 08/01/2006.

SUMMARY OF THE RULE OR CHANGE: Applications for nursing care facility construction received after August 1, 2006, will not be processed by the Department until May 8, 2007, to allow for Legislative study of the impact of Medicare-only facilities on Medicaid-certified facilities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-21-6 (2)(c), and Sections 26-21-9, 26-21-11, 26-21-12, and 26-21-13

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment should reduce imminent inflationary pressure on Medicaid rates and save state budget resources.

❖ LOCAL GOVERNMENTS: No impact anticipated as no local governments operate these facilities.

❖ OTHER PERSONS: Persons who had not yet submitted an application but had construction plans for a nursing facility may have to postpone those plans until May 2007.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons who had not yet submitted an application but had construction plans for a nursing facility may have to postpone those plans until May 2007.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Medicaid-certified nursing facilities believe that Medicare-only nursing facilities are causing immediate and irreparable impacts on cost and quality of services rendered to Medicaid recipients. Medicaid is the largest payor in this market. This temporary freeze will give the Legislature an opportunity to consider whether to address this issue in the 2007 General Session. David N. Sundwall, M.D., Executive Director

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT, LICENSING  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joel Hoffman at the above address, by phone at 801-538-6165, by FAX at 801-538-6163, or by Internet E-mail at [jhoffman@utah.gov](mailto:jhoffman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/09/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

**R432. Health, Health Systems Improvement, Licensing.**

**R432-2. General Licensing Provisions.**

**R432-2-6. Application.**

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(5) An applicant or licensee shall submit a feasibility study as part of its application for a license for a new facility or agency or for a new license for an increase in capacity at a health care facility or expansion of the areas served by an agency.

(a) The feasibility study shall be a written narrative and provide at a minimum:

(i) the purpose and proposed license category for the proposed newly licensed capacity;

(ii) a detailed description of the services to be offered;

(iii) identification of the operating entity or management company;

(iv) a listing of affiliated health care facilities and agencies in Utah and any other state;

(v) identification of funding source(s) and an estimate of the total project capital cost;

(vi) an estimate of total operating costs, revenues and utilization statistics for the twelve month period immediately following the licensing of the new capacity;

(vii) identification of all components of the proposed newly licensed capacity which ensures that residents of the surrounding area will have access to the proposed facility or service;

(viii) identification of the impact of the newly licensed capacity on existing health care providers; and

(ix) a list of the type of personnel required to staff the newly licensed capacity and identification of the sources from which the facility or agency intends to recruit the required personnel.

(b) The applicant or licensee shall submit the feasibility study no later than the time construction plans are submitted. If new construction is not anticipated, the applicant or licensee shall submit the study at least 60-days prior to beginning the new service. The

applicant shall provide a statement with the feasibility study indicating whether it claims business confidentiality on any portion of the information submitted and, if it does claim business confidentiality, provide a statement meeting the requirements of Utah Code section 63-2-308.

(c) The Department shall publish public notice, at the applicant's expense, in a newspaper in general circulation for the location where the newly licensed capacity will be located that the feasibility study has been completed. The Department shall accept public comment for 30 days from initial publication. The Department shall retain the feasibility study and make it available to the public.

(d) The Department shall review the feasibility study, summarize the public comment, review demographics of the geographic area involved and prepare a written evaluation to the applicant regarding the viability of the proposed program.

(6) The licensee may apply to designate any number of beds within the facility's licensed capacity as banked beds on a form provided by the Department.

(a) The licensee may apply to designate beds as banked no later than December 1st of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds banked by the facility.

(c) Banking beds shall not alter the licensed capacity of a facility.

(7) The licensee may apply to return any number of banked beds to operational bed capacity on a form provided by the Department.

(a) The licensee may apply to return banked beds to operational capacity no later than December 1 of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds still banked by the facility.

(c) Beds previously banked that have been returned to operational capacity must meet the construction and life safety codes that were applicable to the facility at the time the beds were last banked.

(8) The Department shall not process any application for construction of new nursing care facilities received after August 1, 2006. This rule provision shall remain in effect until May 8, 2007.

(9) The Department shall not process any application for additions or remodels to existing structures which would increase the licensed capacity of any existing nursing care facility received after August 1, 2006, except as permitted in Utah Code Annotated 26-18-503(3)(f) which permits existing facilities to make limited expansions. This rule provision shall remain in effect until May 8, 2007.

**KEY: health care facilities**

**Date of Enactment or Last Substantive Amendment:**  
~~September 14, 2004~~ 2006

**Notice of Continuation: January 5, 2004**

**Authorizing, and Implemented or Interpreted Law: 26-21-6; 26-21-9; 26-21-11; 26-21-12; 26-21-13**

◆ ————— ◆

## Human Services, Substance Abuse and Mental Health **R523-23** Alcohol Training and Education Seminar Rules of Administration

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28928

FILED: 08/15/2006, 13:55

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** With the merger of the State Divisions of Substance Abuse and Mental Health, it has become necessary to review the Division's rules for relevance and measure them against current practice. During a review of the "On-Premise Server Rule," the Division concluded that changes were needed to make the language of the rule reflect current practice and clarify expectations in a more directly stated manner.

**SUMMARY OF THE RULE OR CHANGE:** The overall numbering has been changed to match the preferred format. On-Premise has been added to the title of the rule to distinguish it from the new Off-Premise training seminar rule. Subsection R523-23-3(5) was added to further clarify activities that can take place if further information is required at the time a provider is being certified to conduct seminars. Subsection R523-23-4(2) has been modified to include clarification that no server can be recertified unless the server retakes the seminar every three years. Subsection R523-23-4(4) has been removed because all curriculums must be approved by the Division whether or not a portion of the information being provided is used in other states. The Division requires all servers, working in an establishment that sells alcohol for on-premise use, to take the complete seminar so Section R523-23-5 has been modified to reflect that practice. Subsection R523-23-7(1)(f) has been renumbered along with all items in this section and the expectation of practicing techniques for dealing with problem customers has been clarified to require face-to-face role play.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-15-401

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** These amendments have no impact on the cost to administer the rule, including the cost for staff and materials, than already exist at this time. Format and numbering modifications comprise the majority of changes in this rule. Content changes include language that strengthens training requirements and a clarification of time frames in which seminar providers are able to correct portions of their programs that do not meet Division standards. None of these requirements would increase the cost of managing this program through the State.

❖ LOCAL GOVERNMENTS: There is no financial obligation for local governments as they neither regulate the serving of alcoholic beverages nor serve them.

❖ OTHER PERSONS: This rule already requires a fee for certification and common practice has included a fee for the seminar along with a cost to the employer of providing for an employees wages while in the seminar. Format and numbering modifications comprise the majority of changes in this rule. Content changes include language that strengthens training requirements and a clarification of time frames in which seminar providers are able to correct portions of their programs that do not meet Division standards, therefore, these amendments will not increase or decrease costs to others in the state. (Costs associated with this rule include: wages paid to employees for time spent in training; employers who do not have a training program, may need to pay a provider for training services that generally cost \$25 per hour; and a fee paid by either the employer or employee to cover the cost of maintaining the Division's database and the printing cost for the certificate of completion and mailing.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule already requires a fee for certification and common practice has included a fee for the seminar along with a cost to the employer of providing for an employees wages while in the seminar. Format and numbering modifications comprise the majority of changes in this rule. Content changes include language that strengthens training requirements and a clarification of time frames in which seminar providers are able to correct portions of their programs that do not meet Division standards, therefore, these amendments will not increase or decrease costs to others in the state. (Costs associated with this rule include: wages paid to employees for time spent in training; employers who do not have a training program, may need to pay a provider for training services that generally cost \$25 per hour; and a fee paid by either the employer or employee to cover the cost of maintaining the Division's database and the printing cost for the certificate of completion and mailing.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After careful review, the Department of Human Services has determined that this rule will have no additional financial impact on businesses in the State of Utah beyond that which is already associated with this rule prior to the current changes. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES  
SUBSTANCE ABUSE AND MENTAL HEALTH  
Room 209  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/09/2006

AUTHORIZED BY: Mark I Payne, Director

## **R523. Human Services, Substance Abuse and Mental Health.**

### **R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.**

#### **R523-23-1. Authority, Intent, and Scope.**

~~[1-](1)~~ These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

~~[2-](2)~~ The intent of statute and rules is to require every person to complete the ~~[S]~~seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

~~[3-](3)~~ These rules include:

~~[a-](a)~~ certification of providers;

~~[b-](b)~~ approval of the Seminar curriculum;

~~[e-](c)~~ the ongoing activities of providers; and

~~[4-](d)~~ the process for approval, denial, suspension and revocation of provider certification.

#### **R523-23-2. Definitions.**

~~[1-](1)~~ "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

~~[2-](2)~~ "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

~~[3-](3)~~ "Director" means the Director of the Division of Substance Abuse and Mental Health.

~~[4-](4)~~ "Division" means the Division of Substance Abuse and Mental Health.

~~[5-](5)~~ "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

~~[6-](6)~~ "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

~~[7-](7)~~ "Seminar" means the Alcohol Training and Education Seminar.

~~[8-](8)~~ "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

~~[9-](9)~~ "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

**R523-23-3. Provider Certification Application Procedure.**

[4-](1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

[2-](2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

[3-](3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

[4-](4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

**R523-23-4. Provider Responsibilities.**

[4-](1) For each person completing the seminar, the provider shall submit to the Division the name, social security number, expiration date and test results indicating pass or fail, and the required fee, within 30 days of the completion of the seminar.

[2-](2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

[3-](3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

~~4. If a provider certifies servers outside of Utah the provider shall also make available and administer the Utah alcohol laws portion of the examination to any server entering this state. The provider shall administer the examination upon request of the server. No server may be certified beyond the original three year expiration date on the certification card without completing a new seminar.~~

**R523-23-5. Server Responsibilities.**

~~[4-] A server who has completed the seminar in another state by a provider who is certified in Utah shall not be required to complete the seminar if the current certification is in force.~~ A server is required within 30 days of employment to pass the ~~[portion of the examination which applies to Utah alcohol laws.]~~ Seminar.

**R523-23-6. Division Responsibilities.**

[4-] The Division shall maintain the list of servers who have completed the seminar and ~~[provide]~~ make this information available to ~~[licensing agencies and licensees]~~ the public for compliance reviews.

**R523-23-7. Approved Curriculum.**

[4-](1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of

classroom instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

[a-](a) Alcohol as a drug and its effect on the body and behavior[-];

[b-](i) [F]facts about alcohol[-];

[e-](ii) ~~[What is alcohol?]~~ what alcohol is; and

[d-](iii) [A]alcohol's path through the body.

[e-](b) Factors influencing the effect of alcohol including:

(i) [F]food and digestive factors;

(ii) [W]weight, physical fitness and gender factors;

(iii) [P]psychological factors;

(iv) [T]tolerance; and

(v) [A]alcohol used in combination with other drugs.

[f-](c) Recognizing drinking levels:

(i) [E]explanation of behavioral signs and indications of impairment;

(ii) [C]classification of behavioral signs; and

(iii) [D]defining intoxication.

[g-](d) Recognizing the problem drinker and techniques for servers to help control consumption:

(i) [U]use of classification system;

(ii) [U]use of alcohol facts;

(iii) [C]continuity of service; and

(iv) [D]drink counting.

[h-](e) Overview of state alcohol laws:

(i) Utah liquor distribution and control;

(ii) [L]legal age;

(iii) [P]prohibited sales;

(iv) [T]third party liability and the Dram Shop Law;

(v) [L]legal definition of intoxication; and

(vi) [L]legal responsibilities of servers.

[i-](f) Techniques for dealing with the problem customer including rehearsal ~~[of]~~ and practice of these techniques[-] using face-to-face role play.

[j-](g) Intervention techniques:

(i) [S]slowing down service;

(ii) [O]offering food or nonalcoholic beverages;

(iii) [S]serving water with drinks;

(iv) [N]not encouraging reorders; and

(v) [C]cutting off service.

[k-](h) Establishing house rules for regulating alcoholic beverages:

(i) [M]management and co-workers' support; and

(ii) [D]dealing with minors; and

[l-](i) Alternative means of transportation and getting the customer home safely:

(i) [A]ask customer to arrange alternative transportation;

(ii) [C]call a taxi for transportation service;

(iii) [A]accommodations for the night; and

(iv) [T]telephone the police.

**R523-23-8. Examination.**

[4-] The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the ~~[Commission]~~ Department of Alcoholic Beverage Control or as updated and approved by the Division.

**R523-23-9. Alcohol Training and Education Seminar Provider Standards.**

~~1.~~ The Division may certify an applicant who:  
~~a.~~ Has a program course that: ~~(1)~~ The Division may certify an applicant who has a program course that:

~~(i)~~(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;

~~(ii)~~(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have ~~never~~not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, ~~[or involving moral turpitude]~~within the last five years;

~~(iii)~~(c) agrees to notify the Division in writing of any changes in instructors and submit the ~~[authorization]~~assurances called for in ~~item~~~~(2)~~Subsection R523-23-9(1)(b) for all new instructors;

~~(iv)~~(d) ~~[C]~~can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; ~~and~~

~~(v)~~(e) will establish and maintain course completion records.

**R523-23-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.**

~~1.~~(1) The Division may deny, suspend or revoke certification if:  
~~a.~~(a) the provider or applicant violates these rules, ~~as provided~~in Section 62A-15-401~~;~~; or~~;~~

~~b.~~(b) ~~[F]~~the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules~~;~~; ~~or~~

~~e.~~(c) ~~[F]~~a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

**R523-23-11. Corrective Action.**

~~1.~~(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

~~a.~~(a) ~~[W]~~within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider~~;~~; ~~and~~

~~b.~~(b) ~~[W]~~within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

**R523-12-12. Suspension and Revocation.**

~~1.~~(1) The Director or designee may suspend the certification of a provider as follows:

~~a.~~(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

~~b.~~(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

~~e.~~(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

~~2.~~(2) The ~~[d]~~Director or designee may revoke certification of a provider as follows:

~~a.~~(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.

~~b.~~(b) A provider fails to comply with corrective action while under a suspension.

~~e.~~(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

**R523-23-13. Procedure for Denial, Suspension, or Revocation.**

~~1.~~(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

~~a.~~(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

~~b.~~(b) The provider may request an informal hearing with the ~~[d]~~Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director shall inform the provider or applicant in writing as required under Section 63-46b-5. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under ~~[UAPA]~~Section 63-46b-5.

**KEY: substance abuse, server training**

**Date of Enactment or Last Substantive Amendment: ~~June 26, 2004~~2006**

**Notice of Continuation: June 24, 2002**

**Authorizing, and Implemented or Interpreted Law: 62A-15-401**



## Technology Services, Administration **R895-5** Acquisition of Information Technology

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 28917

FILED: 08/10/2006, 09:00

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 63F-1-205 of the Utah Technology Governance Act requires the Chief Information Officer (CIO) to establish a value by which additional analysis and review is to be performed for an information technology purchase, lease, or rental.

**SUMMARY OF THE RULE OR CHANGE:** This proposed new rule provides a value by which additional analysis and review is to be performed for an information technology purchase, lease, or rental.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 63-46a-3, 63F-1-205, and 63F-1-206

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** It is anticipated that the additional analysis and review required under this rule may create a

slight cost to the state. However, the state may avoid unnecessary costs when an information technology purchase, rental, or lease is determined to be unacceptable.

❖ LOCAL GOVERNMENTS: None--This rule does not impose a fee or administrative requirements upon a local governmental entity. Therefore, it is anticipated that there will be no costs or savings to local government.

❖ OTHER PERSONS: None--This rule does not impose a fee or administrative requirements upon a person. Therefore, it is anticipated that there will be no costs or savings to any person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not impose a fee or administrative requirements upon a person. Therefore, it is anticipated that there will not be a cost of compliance to any person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no fiscal impact on business. J. Stephen Fletcher, CIO/Executive Director

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

TECHNOLOGY SERVICES  
ADMINISTRATION  
Room 6000 STATE OFFICE BUILDING  
450 N MAIN ST  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

William Shiflett at the above address, by phone at 801-538-3548, by FAX at 801-538-9787, or by Internet E-mail at williams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2006

AUTHORIZED BY: J Stephen Fletcher, CIO and Executive Director

**R895. Technology Services, Administration.**

**R895-5. Acquisition of Information Technology.**

**R895-5-1. Purpose.**

The purpose of this rule is to identify the standards under which an agency of the executive branch must obtain approval from the Chief Information Officer before acquiring information technology and technology related services.

**R895-5-2. Authority.**

The rule is issued by the Chief Information Officer under the authority of Sections 63F-1-205 and 63F-1-206 of the Utah Technology Governance Act, and Section 63-46a-3 of the Utah Rulemaking Act, Utah Code.

**R895-5-3. Scope of Application.**

All agencies of the Executive Branch of State government, including its administrative sub-units, except the State Board of Education, the Board of Regents and institutions of higher education, and elective constitutional offices, are to be included within the scope of this rule.

**R895-5-4. Definitions.**

(1) "Hardware" means physical technology (i.e., equipment) used to process, manage, store, transmit, receive, or deliver information. This term also includes telephony products.

(2) "Small technology purchases" means a purchase, lease, or rental of hardware, software, and/or technology services that is estimated to be less than \$50,000.

(3) "Software" means non-physical technology used to process, manage, store, transmit, receive, or deliver information. The term also includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates, or replacements.

(4) "Technology services" means all the services, functions, and activities that facilitate the design, implementation, creation, or use of software, hardware, or telephony products. The term includes data acquisition, seat management, staffing augmentation, training, maintenance, and subscription services.

**R895-5-5. Purchase of Hardware, Software, and Technology Services.**

(1) The Chief Information Officer (CIO) shall exercise general supervision and control over the purchase of all hardware, software, and technology services.

(2) The CIO may delegate the authority to make small technology purchases. The delegation shall be in writing and may be limited as directed by the CIO.

(3) Purchase requirements for hardware, software, and technology services shall not be artificially divided so as to constitute a small technology purchase under this rule.

**R895-5-6. Rule Compliance Management.**

The CIO may monitor compliance of this rule within the State Executive Branch, and report any findings or violations of this rule to an agency's Executive Director or designee. A State Executive Branch agency's Executive Director, or designee, upon becoming aware of a violation of this rule shall provide the CIO a report of action(s) taken in response to violation of this rule.

**KEY: IT standards, IT bid committee, technology best practices, technology purchases**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 63F-1-205; 63-46a-3**



Transportation, Administration  
**R907-67**  
Suspension of Contractors from Work  
on Department Projects - Reasons

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 28932

FILED: 08/15/2006, 17:17

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On advice from counsel, changes are made.

SUMMARY OF THE RULE OR CHANGE: The following changes are made: 1) allows for a non-adversarial decision making process; 2) clarifies that suspension is different from debarment; and 3) makes wording and diction changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201

## ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes may result in less cost because attorneys will not need to be involved, but the cost cannot be estimated at this time.

❖ LOCAL GOVERNMENTS: The rule does not affect local governments because they are not contractors. Therefore, there will be no cost to them.

❖ OTHER PERSONS: The changes may result in less cost because attorneys will not need to be involved, but the cost cannot be estimated at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes may result in less cost because attorneys will not need to be involved, but the cost cannot be estimated at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes may result in less cost because attorneys will not need to be involved, but the cost cannot be estimated at this time. John R. Njord, Executive Director

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at [jbeadles@utah.gov](mailto:jbeadles@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/09/2006

AUTHORIZED BY: John R. Njord, Executive Director

**R907. Transportation, Administration.**

**R907-67. [~~Suspension~~Debarment of Contractors from Work on Department Projects -- Reasons.**

**R907-67-1. [~~Suspension~~Debarment of Contractors from Work on Department Projects -- Reasons.**

The department may [~~suspend~~debar a contractor, which, for purposes of this rule includes Consultants and owners, directors, managers, officers or fiscal agents of the Contractor or Consultant), from performing any work on projects that it administers if, by substantial evidence, it concludes that one of the following factors is present. Debarment prevents the contractor from performing work on any department projects, either as a prime contractor or subcontractor.

(1) The Contractor has been convicted of or entered a plea of guilty or nolo contendere to a crime that is related to a bid or contract-related crime in any court in the United States;

(2) The Contractor has publicly admitted to conduct constituting a crime that is related to a bid or contract;

(3) The Contractor has falsified information or submitted deceptive or fraudulent statements in connection with prequalification, bidding, or performance of a contract;

(4) The Contractor has violated federal or state antitrust laws;

(5) The Contractor has demonstrated willful wrongdoing that reflects a lack of integrity in bidding or performing a public project;

(6) The Contractor, including a joint venture, stockholder of more than five (5) percent of the available stock, or any immediate relatives of the aforementioned has been debarred or suspended or is affiliated with any debarred or suspended person in any state or by the federal government;

(7) The deputy director or designee concludes that the Contractor has acted in collusion with others to perform work on a project that supposedly satisfied disadvantaged business enterprise (DBE) goals or requirements through other than bona fide disadvantaged business enterprises in any combination of individuals, firms, or corporations;

(8) The Contractor has defaulted under previous contracts;

(9) The Contractor has performed previous or current work in an unsatisfactory manner, as determined solely by the Project Manager. Among the items that can be the subject of unsatisfactory performance are the following, though there may be others that are similar in importance and require a determination of unsatisfactory performance:

(a) noncompliance with the contract;

(b) failure to complete work on time;

(c) instances of substantial corrective work being needed before acceptance of the work;

(d) instances of completed work that requires acceptance at reduced pay;

(e) production of non-specification work or materials, and when applicable, required price reductions or corrective work;

(f) failure to provide adequate safety measures and appropriate traffic control that endangered the safety of the work force or the public.

(10) The Contractor has questionable moral integrity as determined by the department, the United States Attorney General, the Utah Attorney General, or any other state;

(11) Failure to reimburse the state for monies owned on any previously awarded contract including those where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the state for monies owed.

(12) The deputy director or designee reasonably believes and finds that the public health, welfare, or safety require suspension.

**R907-67-2. Procedures for Debarment[Suspension].**

If the Engineer for Construction believes a Contractor should be debarred[suspended], he or she will follow the procedures listed in R907-1-2, Commencement by Department - Notice of Agency Action - Procedures. The proceeding shall be handled as an informal administrative proceeding unless the deputy director's designee grants a request for conversion to a formal proceeding. The Notice of Agency Action shall also set forth the amount of time being sought as a [suspension]debarment period.

**R907-67-3. Status Pending Debarment[Suspension].**

[~~Provided that the contract between the Contractor and the department provide for immediate suspension in case of debarment, suspension~~](1) If the contract between the department and the Contractor allows for the period of debarment to begin immediately upon service of the Notice of Agency Action or within 15 days of service, debarment begins on the date provided for by the contract. [~~on the date the Notice of Agency Action is served upon the Contractor.~~] If the contract is silent, debarment begins thirty (30) days after service of the Notice of Agency Action unless the deputy director or designee believes emergency action is necessary, in which case debarment begins upon service. If the Contractor files a Request for Review pursuant to Utah Admin. Code R907-1, debarment is stayed pending completion of the appeal. [~~Once suspended, the Contractor is prohibited from working either as a contractor for the department or as a subcontractor for someone who is a contractor for the department. The suspension lasts for the amount of time given in the Notice of Agency Action.~~]

**R907-67-4. Suspension from Consideration for Award of Contracts - Indictments.**

(1) If the deputy director believes there is probable cause that a Contractor has engaged in activity that would, if true, lead to debarment under Utah Admin. Code R907-67-1, he or she may suspend the Contractor from consideration for award of contracts. A contractor who is suspended may not bid on any department contracts. Suspension may last for no more than three (3) months unless an indictment has been issued, or information filed, alleging that the Contractor has engaged in criminal activity that would, if true, lead to debarment under Utah Admin. Code R907-67-1. If an indictment has been issued or information filed, suspension shall last until completion of the Contractor's trial or the dismissal of charges.

(2) A conviction or plea of guilt to any offense related to an activity listed in Utah Admin. Code R907-67-1 is sufficient to support debarment without any additional evidence being offered. However, neither an acquittal nor dismissal of charges entitles the Contractor to a dismissal of the debarment notice.

**R907-67-[4]5. Length of Debarment.**

(1) A person found to have committed an act listed in R907-67-1 shall be debarred for a term of not less than six months nor more than three years.

(2) To determine the specific period of time, the department will evaluate the following:

- (a) degree of culpability;
- (b) restitution to the state;
- (c) cooperation in the investigation of bidding or contract-related crimes;
- (d) disassociation with those involved in the crimes and active cooperation in prosecuting others who are involved in the crimes.

(3) Neither suspension nor debarment[~~Suspension does not~~] absolve the Contractor of his or her responsibility to perform existing contracts, even if the Contractor needs to find other companies, firms, or individuals who can perform in his or her place.

(4) The department also retains the right to declare a suspended or debarred Contractor in default on any existing contract if allowed by the contract.

(5) If a basis for debarment is an alleged criminal occurrence or conviction and the Contractor has, as part of a sentence or plea agreement, agreed not to bid on public works for more than three years, then the department may extend the debarment to fit the terms of the sentence or plea agreement.

**R907-67-[5]6. Right to Appeal.**

The Contractor may appeal the [suspension]debarment under the provisions of Utah Admin. Code R907-1. The deputy director or designee may name a board of engineers experienced in the type of work for which the Contractor is being debarred to hear the appeal.

**KEY: highways, transportation, contractors, suspension**

**Date of Enactment or Last Substantive Amendment: [January 5, 2004]2006**

**Authorizing, and Implemented or Interpreted Law: 72-1-201**



## Transportation, Preconstruction R930-3-0 Purpose

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 28915  
FILED: 08/07/2006, 16:25

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended at the request of the Governor's Office of Planning and Budget.

**SUMMARY OF THE RULE OR CHANGE:** The amendment takes out the word "generally" and states what provision is different from the national standards.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The amendment will have no cost or savings associated with the state budget as it is only a wording change.
- ❖ **LOCAL GOVERNMENTS:** The amendment will have no cost or savings associated with local government as it is only a wording change.
- ❖ **OTHER PERSONS:** The amendment will have no cost or savings associated with other persons as it is only a wording change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment will have no cost or savings associated with affected persons as it is only a wording change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment will have no cost or savings associated with it as it is only a wording change. John R. Njord, Executive Director

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

TRANSPORTATION  
PRECONSTRUCTION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at [jbeadles@utah.gov](mailto:jbeadles@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/09/2006

AUTHORIZED BY: John R. Njord, Executive Director

**R930. Transportation, Preconstruction.**

**R930-3. Highway Noise Abatement.**

**R930-3-0. Purpose.**

The following is [~~generally~~] consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise, 23 CFR 772, which is hereby adopted and incorporated by reference, and in accordance with Utah Code Ann. Section 72-6-111 except that noise abatement in the form of noise barriers will only be considered for Interstate highways and Limited Access facilities. This rule[~~#~~] is [~~provided~~] designed to allow UDOT to address highway noise impacts and to determine the conditions under which noise abatement may be approved.

**KEY: transportation, barrier, traffic noise abatement, highways**  
**Date of Enactment or Last Substantive Amendment: [~~June 22,~~**  
**2006**

**Notice of Continuation: January 22, 2002**

**Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-101**



**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends October 2, 2006. At its option, the agency may hold public hearings.

From the end of the waiting period through December 30, 2006, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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

Health, Health Systems Improvement,  
Child Care Licensing  
**R430-100**  
Child Care Center

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 28733  
Filed: 08/14/2006, 16:47

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rulemaking action is to make changes and clarifications in the proposed rule based on questions and concerns raised during the public comment period. The purpose is to also to modify proposed new playground rules and extend the phase-in time providers have to comply with the new playground rules, based on public comment.

**SUMMARY OF THE RULE OR CHANGE:** These changes clarify language in the proposed rule. They also delete and add changes based on comments about the proposed rule received during the 30-day public comment period. None of these revisions substantially change the requirements in the proposed rule. The greatest number of changes are in the outdoor environment rule requirements. The most significant of these changes gives child care providers a longer phase-in period to come into compliance with new playground rules. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed repeal and reenactment that was published in the June 1, 2006, issue of the Utah State Bulletin, on page 52. Underlining in the rule below indicates text that has been added since the publication of the proposed repeal and reenactment mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 39

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** There is no difference in costs or savings between the original proposed rule and this change in the proposed rule so there are no anticipated costs or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** There is no difference in costs or savings between the original proposed rule and this change in the proposed rule so there are no anticipated costs or savings to local government.
- ❖ **OTHER PERSONS:** There is no difference in costs or savings between the original proposed rule and this change in the proposed rule so there are no anticipated costs or savings to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed changes will not change the compliance costs for providers. However, the changes will give providers a longer phase-in period to come into compliance with new playground rules,

which allow them to spread their compliance costs over a longer time period.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed changes do not appear to have any fiscal impact on businesses. Richard Melton, Acting Executive Director

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT,  
CHILD CARE LICENSING  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Teresa Whiting at the above address, by phone at 801-538-6320, by FAX at 801-538-6325, or by Internet E-mail at TWHITING@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 10/09/2006

AUTHORIZED BY: Richard Melton, Deputy Director

**R430. Health, Health Systems Improvement, Child Care Licensing.**  
**R430-100. Child Care Centers.**

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**R430-100-2. Definitions.**

- (1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.
- (2) "ASTM" means American Society for Testing and Materials.
- (3) "Body fluids" means blood, urine, feces, vomit, mucous, ~~and~~ saliva, and breast milk.
- (4) "Caregiver" means an employee or volunteer who provides direct care to children.
- (5) "CPSC" means the Consumer Product Safety Commission.
- (6) "Department" means the Utah Department of Health.
- (7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could~~is designed for children to~~ stand, walk, sit, or climb on, and is at least 2" by 2" in size.
- (8) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene ~~if needed~~ when necessary.

(9) "Disinfect" means to eliminate most germs from inanimate surfaces through the use of chemicals registered with the U.S. Environmental Protection Agency as disinfectants in the manner described on the label, or through physical agents such as heat.

(10) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning ~~children~~ a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(11) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(12) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(13) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.

(14) "Infant" means a child aged birth through 11 months of age.

(15) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(16) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(17) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies.

(18) "Parent" means the parent or legal guardian of a child in care.

(19) "Person" means an individual or a business entity.

(20) "Physical Abuse" means causing nonaccidental physical harm to a child.

(21) "Play~~ground~~ Equipment Platform" means a flat surface on a piece of stationary play~~ground~~ equipment intended for more than one user to stand on, and upon which the users can move freely.

(22) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(23) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play~~ground~~ equipment platform that is intended to prevent a child from either accidentally or deliberately passing through the barrier.

(24) "Provider" means ~~either~~ the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(25) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(26) "School Age" means kindergarten and older age children.

(27) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(1)(2).

(28) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(29) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

~~(30)(29)~~ "Toddler" means a child aged 12 months but less than 24 months.

~~(31)(30)~~ "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

#### **R430-100-3. License Required.**

A person or persons must be licensed as a child care center under this rule if:

(1) they provide care in lieu of care ordinarily provided by a parent, for four or more hours per day;

(2) they provide care in a place other than the provider's home or the child's home;

(3) they provide care for five or more children;

(4) they provide care for each individual child for less than 24 hours per day;

(5) the program has a regularly scheduled, ongoing enrollment; and

(6) they provide care for direct or indirect compensation.

#### **R430-100-4. Indoor Environment.**

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint ~~[on the interior or exterior of the building]~~ is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) There shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children.

(3) School age children shall have privacy when using the bathroom.

(4) For buildings constructed after 1 July 1997 there shall be a working hand washing sink in each classroom.

(5) Each area where infants or toddlers ~~[area]~~ are cared for shall meet one of the following criteria:

(a) There shall be two working sinks in the room. One sink shall be used exclusively for the preparation of food and bottles and hand washing prior to food preparation, and the other sink shall be used exclusively for hand washing after diapering and non-food activities.

(b) There shall be one working sink in the room which is used exclusively for hand washing, and all bottle and food preparation shall be done in the kitchen and brought to the infant and toddler area by a non-diapering staff member.

(6) Infant and toddler areas shall not be used as access to other areas or rooms.

(7) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.

(8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(10) Windows, glass doors, and glass mirrors~~[Glass surfaces]~~ within 36 inches from the floor shall be made of safety glass, or have a protective guard.

(11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store classroom materials.

(13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

#### **R430-100-5. Cleaning and Maintenance.**

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and disinfect bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children ~~and the spread of disease~~.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

#### **R430-100-6. Outdoor Environment.**

(1) There shall be an outdoor play area for children that is safely accessible to children ~~directly adjoins or borders the building with a common boundary~~.

(2) The outdoor play area shall have at least 40 square feet of space for each child.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(5) There shall be no gaps in fences greater than ~~5~~<sup>3-1/2</sup> inches at any point, nor shall gaps between the bottom of the fence and the ground be more than ~~5~~<sup>3-1/2</sup> inches.

(6) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(7) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

~~(8)~~<sup>(6)</sup> The outdoor play area shall be free of trash, animal excrement, harmful plants, objects, or substances, and standing water ~~[, such as ponds or wading pools]~~.

(9) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers or rubber pants while in the pool; and

(c) the pool shall be emptied and disinfected after each use by a separate group of children.

~~(10)~~<sup>(7)</sup> The outdoor play area shall have a shaded area to protect children from excessive sun and heat.

~~(11)~~<sup>(8)</sup> An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

~~(12)~~<sup>(9)</sup> There shall be no trampolines in the outdoor play area.

~~(13)~~<sup>(10)</sup> All outdoor play equipment and areas shall comply with the following ~~playground equipment~~ safety standards by the dates specified in Table 4, ~~[1 June 2009:]~~

(a) All stationary play ~~ground~~ equipment used by ~~infants, toddlers, and 2-year-olds~~ infants and toddlers shall meet ~~ing~~ the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on ~~of~~ a piece of equipment, excluding swings, is greater than 18 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(B) Use zones may overlap if two pieces of ~~stationary~~ equipment are positioned adjacent to one another, with a minimum of 3 feet between the perimeters of the two pieces of equipment.

(C) The use zone in front of a slide may not overlap the use zone of any other piece of ~~playground~~ equipment.

(iii) The use zone in the front and rear of all swings shall extend a minimum distance of twice the height ~~[of the pivot point]~~ from the swing seat to the pivot point of the swing, and shall not overlap the use zone of any other piece of equipment.

(iv) The use zone for the sides of a single-axis swing shall extend a minimum of 3 feet from the perimeter of the structure, and may overlap the use zone of a separate adjacent piece of equipment ~~[may overlap the use zone for the sides of an adjacent single-axis swing]~~.

(v) The use zone of a multi-axis swing shall extend a minimum distance of 3 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(vi) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vii) The use zone for spring rockers shall extend a minimum of 3 feet from the at-rest perimeter of the equipment.

(viii) Swings shall have enclosed seats.

(b) All stationary play ~~ground~~ equipment used by preschoolers or school age children ~~[children age three years old and older]~~ shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on ~~of~~ a piece of equipment, excluding swings, is greater than 20 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of ~~stationary playground~~ equipment that are positioned adjacent to one another may overlap if the designated play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In

such cases, there shall be a minimum of ~~may be~~ 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of ~~stationary play~~ equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the ~~side~~ use zone of a separate piece of equipment ~~adjacent single axis swing~~.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the ~~at rest~~ at rest perimeter of the equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

~~(d)~~ (e) Protective cushioning is required in all use zones.

~~(d) If loose fill materials are used, the depth of the protective cushioning material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compression, and if compressed, shall loosen it to the depth in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.~~

TABLE 1  
Critical Heights of Playground Equipment  
for Depth Protective Cushioning

UNCOMPRESSED DEPTH 6 Inches of Cushioning	
MATERIAL	
Wood Chips	less than or equal to 7'
Double Shredded	
Bark Mulch	less than or equal to 6'
Engineered Wood	
Fibers	less than or equal to 6'
Fine Sand	less than or equal to 5'
Coarse Sand	less than or equal to 5'
Fine Gravel	less than or equal to 6'
Medium Gravel	less than or equal to 5'
Shredded Tires	10-12'

UNCOMPRESSED DEPTH 9 Inches of Cushioning	
MATERIAL	
Wood Chips	greater than 7' less than or equal to 10'
Double Shredded	
Bark Mulch	greater than 6' less than or equal to 10'
Engineered Wood	
Fibers	greater than 6' less than or equal to 7'
Fine Sand	5'
Coarse Sand	5'
Fine Gravel	greater than 6' less than or equal to 7'
Medium Gravel	5'
Shredded Tires	N/A

UNCOMPRESSED DEPTH 12 Inches of Cushioning	
MATERIAL	
Wood Chips	greater than 10' less than or equal to 11'
Double Shredded	
Bark Mulch	greater than 10' less than or equal to 11'
Engineered Wood	
Fibers	greater than 7' less than or equal to 12'
Fine Sand	greater than 5' less than or equal to 9'
Coarse Sand	greater than 5' less than or equal to 6'
Fine Gravel	greater than 7' less than or equal to 10'
Medium Gravel	greater than 5' less than or equal to 6'
Shredded Tires	N/A

COMPRESSED DEPTH 9 Inches of Cushioning	
MATERIAL	
Wood Chips	10'
Double Shredded	
Bark Mulch	7'
Engineered Wood	
Fibers	6'
Fine Sand	5'
Coarse Sand	4'
Fine Gravel	6'
Medium Gravel	5'
Shredded Tires	N/A

~~(e) If a unitary cushioning material, such as rubber mats or poured rubber like materials is used as protective cushioning, the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292 (2004 edition), which is incorporated by reference. The provider shall maintain documentation from the manufacturer that the materials meet these specifications.~~

~~(f) The licensee shall ensure that the protective cushioning within the use zone of each play structure is installed in accordance ASTM Specification F 1292 appropriate for the fall height of each structure and Specification F 1951, which is incorporated by reference, where applicable. The provider shall maintain documentation from the installer that the installation meets these specifications.~~

(e) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1  
Depths of Protective Cushioning Required  
for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface or Climbing Bar	Fine Sand		Medium Gravel		Shredded Tires
	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"
Over 6' up to 7'	12"	not allowed	9"	not allowed	6"
Over 7' up to 8'	12"	not allowed	12"	not allowed	6"
Over 8' up to 9'	12"	not allowed	12"	not allowed	6"
		allowed		allowed	

Over 9' up to 10'	not allowed	not allowed	12" allowed	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(f) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2  
Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface or Climbing Bar	Engineered	Wood	Double Shredded
	Wood Fibers	Chips	Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	12"	9"	9"
Over 8' up to 9'	12"	9"	9"
Over 9' up to 10'	12"	9"	9"
Over 10' up to 11'	12"	12"	12"
Over 11'	12"	not allowed	not allowed

(g) If wood products are used as cushioning material:  
 (i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and  
 (ii) there shall be adequate drainage under the material.  
 (h) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:  
 (i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.  
 (ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.  
 (i)(+) Stationary play equipment that has a designated play surface less than the height specified in Table [2]3, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE [2]3  
Heights of Designated Play Surfaces That May Be Placed on Grass

INFANTS and TODDLERS	PRESCHOOLERS	SCHOOL AGE
Less than 18"	Less than 20"	Less than 30"

(j)(+) On stationary play[ground] equipment used by infants and toddlers, protective barriers shall be provided on all play[ground] equipment platforms that are over 18 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 24 inches above the surface of the platform.

(k)(+) On stationary play[ground] equipment used by preschoolers, protective barriers shall be provided on all play[ground] equipment platforms that are over 30 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 29 inches above the surface of the platform.

(l)(+) On stationary play[ground] equipment used by school age children, protective barriers shall be provided on all play[ground] equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(k) No component or group of components of any structure or equipment on the playground shall have openings greater than 3-1/2 x 6-1/4 inches and less than 9 inches in diameter.

(m) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(n)(+) There shall be no protrusion or strangulation[entanglement] hazards in or adjacent to the use zone of any piece of stationary play equipment.

(o)(+) There shall be no pinch, crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(p)(+) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

TABLE 4  
Phase-in Schedule for Stationary Play Equipment Rules

- By December 2007:
  - ~~R430-100-6(13)(a)(viii)~~
  - ~~R430-100-6(13)(d-h)~~
- By December 2008:
  - ~~R430-100-6(13)(i), unless equipment is installed in concrete or asphalt footings.~~
  - ~~R430-100-6(13)(n)~~
- By December 2009:
  - ~~R430-100-6(13)(a)(i)~~
  - ~~R430-100-6(13)(i), when equipment is installed in concrete or asphalt footings.~~
- By December 2010:
  - ~~R430-100-6(13)(j-1)~~
  - ~~R430-100-6(13)(m)~~
  - ~~R430-100-6(13)(o)~~
- By December 2011:
  - ~~R430-100-6(13)(a)(ii-vii) and R430-100-6(13)(c)~~
  - ~~R430-100-6(13)(p)~~

(14)(+) The provider shall maintain playgrounds and playground equipment to protect children's safety.

(p) The provider shall prepare a phase-in plan identifying the center's schedule to comply with R430-100-7(10) by June 1, 2009. The plan shall be submitted to the Department no later than June 30, 2007.

**R430-100-7. Personnel.**

(1) The center must have a director who is at least 21 years of age and who has one of the following educational credentials:

(a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of early childhood development courses;

(b) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute[-];

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(d) a currently valid National Administrator[s] Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses offered through Child Care Resource and Referral: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(e) Center directors who used only the National Administrator Credential (NAC) to meet the director qualifications prior to 1 July 2006 have until ~~June 30, 2011~~ 30 June 2011 to obtain the required additional training in early childhood development.

(2) All caregivers shall be at least 18 years of age.

(3) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

(4) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with children.

(5) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

~~[(6) There shall be at least one caregiver in each group of children at all times who can demonstrate the literacy skills needed to care for children and respond to emergencies.]~~ [(6) Whenever there are more than 8 children at the center, there shall be at least two caregivers present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. If there is only one caregiver present because there are 8 or fewer children at the center, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.]

(7) Each new caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

- (a) job description and duties;
- (b) the center's written policies and procedures;
- (c) the center's emergency and disaster plan;
- (d) child care licensing rules for:
  - (i) Supervision and Ratios. R430-100-11;
  - (ii) Injury Prevention. R430-100-12;
  - (iii) Parent Notification and Child Security. R430-100-13;
  - (iv) Child Health. 430-100-14;

(v) Child Nutrition. R430-100-15;

(vi) Infection Control. R430-100-16;

(vii) Medications. R430-100-17;

(viii) Napping. R430-100-18;

(ix) Child Discipline. R430-100-19;

(x) Activities. R430-100-20;

(xi) Transportation, R430-100-21, if the center provides transportation;

(xii) Animals, R430-100-22, if the center permits animals;

(xiii) Diapering, R430-100-23, if the center diapers children;

and

(xiv) Infant and Toddler Care, R430-100-24, if the center cares for infants or toddlers.

(e) introduction and orientation to the children assigned to the caregiver;

(f) a review of the information in the health ~~history~~ assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper clean up of body fluids;

(i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(k) If the center provides infant care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(8) The center director and all caregivers shall complete a minimum of 20 hours of training each year, based on the center's license date.

(a) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicensure date.

(c) Annual training hours shall include the following topics:

(i) a review of all of the current child care licensing rules for:

(A) Supervision and Ratios. R430-100-11;

(B) Injury Prevention. R430-100-12;

(C) Parent Notification and Child Security. R430-100-13;

(D) Child Health. 430-100-14;

(E) Child Nutrition. R430-100-15;

(F) Infection Control. R430-100-16;

(G) Medications. R430-100-17;

(H) Napping. R430-100-18;

(I) Child Discipline. R430-100-19;

(J) Activities. R430-100-20;

(K) Transportation, R430-100-21, if the center provides transportation;

(L) Animals, R430-100-22, if the center permits animals;

(M) Diapering, R430-100-23, if the center diapers children;

and

(N) Infant and Toddler Care, R430-100-24, if the center cares for infants or toddlers.

(ii) a review of the center's written policies and procedures and emergency and disaster plans, including any updates;

(iii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(iv) principles of child growth and development, including development of the brain; and

(v) positive guidance.

(d) If the center provides infant care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(9) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.

#### **R430-100-8. Administration.**

(1) The licensee is responsible for all aspects of the operation and management of the center.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

~~(5)(3)~~ Either the center director or a designee with written authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.

~~(6)(4)~~ Director designees shall be at least 21 years of age, and shall have completed their orientation training.

~~(7)(5)~~ The center director shall be on-site at the center for at least 20 hours per week during operating hours in order to fulfill the duties specified in this rule, and to ensure compliance with this rule.

~~(8)(6)~~ The center director must have sufficient freedom from other responsibilities to manage the center and respond to emergencies.

~~(9)(7)~~ There shall be a working telephone at the facility, and the center director shall inform a parent and the Department of any changes to the center's telephone number within 48 hours of the change.

~~(10)(8)~~ The provider shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's medical treatment plan identified by the parent[s]. The provider shall also mail or fax a written report to the Department within five days of the incident.

~~(11)(9)~~ The duties and responsibilities of the center director include the following:

(a) appoint, in writing, one or more caregivers to be a director designee, with authority to act on behalf of the center director in his or her absence;

(b) train and supervise staff to:

(i) ensure their compliance with this rule;

(ii) ensure they meet the needs of the children in care as specified in this rule; and

(iii) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

~~(12)(10)~~ The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the center releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of ~~videos~~ movies and video or computer games, including what industry ratings the center allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the center;

(h) ensuring that food preparation and diapering handwashing are not done in the same sink in infant and toddler areas;

(i) discipline of children, including behavioral expectations of children and discipline methods used;

(j) transportation to and from off-site activities, or to and from home, if the center offers these services; and

(k) if the program offers transportation to or from school, policies addressing:

(i) how long children will be unattended before and after school;

(ii) what steps will be taken if children fail to meet the vehicle;

(iii) how and when parents will be notified of delays or problems with transportation to and from school; and

(iv) the use of size-appropriate safety restraints.

~~(13)(11)~~ The provider shall ensure that the written policies and procedures are available for review by parents, staff, and the Department during business hours.

#### **R430-100-9. Records.**

(1) The provider shall maintain the following records on-site for review by the Department:

~~(a) the center's written policies and procedures;~~

~~(a)~~ documentation of the previous 12 months of fire and disaster drills as specified in R430-10(11)(12)(13)(14);

~~(b)~~ current animal vaccination records as required in R430-100-22(3);

~~(c)~~ a six week record of child attendance, including sign-in and sign-out records;

~~(d)~~ all current variances granted by the Department;

~~(e)~~ a current local health department inspection;

~~(f)~~ a current local fire department inspection;

~~(g)~~ the most recent "Request for Annual Renewal of CBS/MIS Criminal History Information for Child Care";

~~(h)~~ records for each currently enrolled child, including the following:

(i) an admission form containing the following information for each child:

(A) name;

(B) date of birth;

(C) date of enrollment;

(D) the parent's name, address, and phone number, including a daytime phone number;

(E) the names of people authorized by the parent to pick up the child;

(F) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;

(G) the name, address, and phone number of an out of area/state emergency contact person for the child, if available; and

(H) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(ii) a current annual health assessment form as required in R430-100-14(5);

(iii) current immunization records or documentation of a legally valid exemption, as specified in R430-100-14(4);

(iv) a transportation permission form, if the center provides transportation services;

(v) a six week record of medication permission forms, and a six week record of medications actually administered; and

(vi) a six week record of incident, accident, and injury reports;[~~and~~]

(vii) a six week record of eating, sleeping, and diaper changes as required in R430-100-23(12) R430-100-24(15); and

(i)[(j)] records for each staff member, including the following:

(i) date of initial employment;

(ii) results of initial TB screening;

(iii) approved initial "CBS/MIS Consent and Release of Liability for Child Care" form;

(iv) the most recent "Disclosure Statement" for a criminal background check, if the employee has worked at the facility since the last license renewal;

(v) a six week record of days and hours worked;

(vi) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(vii) annual training documentation for caregivers; and

(viii) current first aid and CPR certification, if applicable as required in R430-100-10(2), R430-100-20(5)(d), and R430-100-21(2).

(2) The provider shall ensure that information in children's files is not released without written parental permission.

#### **R430-100-10. Emergency Preparedness.**

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The center shall maintain at least one readily available first aid kit, and a second first aid kit for field trips if the center takes children on field trips. The first aid kit shall include the following items:

(a) disposable gloves;

(b) assorted sizes of bandaids;

(c) gauze pads and roll;

(d) adhesive tape;

(e) antiseptic or a topical antibiotic;

(f) tweezers; and

(g) scissors.

(4) Each first aid kit shall be in a closed container, readily accessible to staff but inaccessible to children.

(5) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency exit plan;

(e) an emergency relocation site where children may be housed if the center is uninhabitable;

(f) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;

(g) the transportation route and means of getting staff and children to the emergency relocation site;

(h) a means of accounting for each child's presence in route to and at the relocation site;

(i) a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;

(j) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;

(k) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and

(l) staff assignments for specific tasks during an emergency.

(6) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(7) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(8) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.

(9) The provider shall post emergency exit plans in conspicuous locations in each area or classroom occupied by children or staff. The emergency exit plan shall identify the reader's location within the building, and shall show the exit paths and the locations of the fire extinguishers and fire alarm pulls.

(10) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.

(11) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(12) The provider shall conduct drills for disasters other than fires at least once every six months.

(13) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(14) The center shall vary the days and times on which fire and other disaster drills are held.

**R430-100-11. Supervision and Ratios.**

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) There shall be at least two caregivers with the children at all times when there are more than 8 children or more than 2 infants present.

(4) The licensee shall maintain the minimum caregiver to child ratios and group sizes in Table [3]5 for single age groups of children.

TABLE [3]5  
Minimum Caregiver to Child Ratios and Group Sizes

Ages of Children	# of Caregivers	# of Children	Maximum Group Size
birth - 23 months	1	4	8
2 years old	1	7	14
3 years old	1	12	24
4 years old	1	15	30
5 years old and school age	1	20	40

(5) A center[Center] constructed prior to [January 1, 2004]1 January 2004 which has been licensed and operated as a child care center continuously since [January 1, 2004]1 January 2004 is exempt from maximum group size requirements, if the required caregiver to child ratios are maintained, and the required square footage for each classroom is maintained.

(6) Ratios and group sizes for mixed age groups are determined by averaging the ratios and group sizes of the ages represented in the group, with the following exception: if more than half of the group is composed of children in the youngest age group, the caregiver to child ratio and group size for the youngest age shall be maintained.

(7) Table [4]6 represents the caregiver to child ratios and group size for common mixed age groups.

TABLE [4]6  
Minimum Caregiver to Child Ratios and Group Sizes for Mixed Age Groups

TWO MIXED AGES	# of Caregivers	# of Children	Maximum Group Size
2 and 3 years	1	10	19
3 and 4 years	1	14	27
4 and 5 years and school age	1	18	35

  

THREE MIXED AGES	# of Caregivers	# of Children	Maximum Group Size
2, 3, and 4 years	1	11	23
3, 4, and 5 years and school age	1	16	31

  

FOUR MIXED AGES	# of Caregivers	# of Children	Maximum Group Size
2, 3, 4 and 5 years and school age	1	13	27

(8) Infants and toddlers may be included in mixed age groups only when 8 or fewer children are present at the center.

(9) If more than 2 infants or toddlers are included in a mixed age group, there shall be at least 2 caregivers with the group.

(10) During nap time the caregiver to child ratio may double for not more than two hours for children age 18 months and older, if the children are in a restful or non-active state, and if a means of communication is maintained with another caregiver who is on-site. The caregiver supervising the napping children must be able to contact the other on-site caregiver without having to leave children unattended in the napping area.

(11) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child[licensee or employee] is working at the center, but are counted in the maximum group size.

**R430-100-12. Injury Prevention.**

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children. [

~~(2) The provider shall conduct a daily inspection of the building and grounds to ensure the premises is safe and free from potential hazards to children.]~~

(2)[(3)] The provider shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords.

(3)[(4)] Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4)[(5)] The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a locked cabinet or area, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

~~(b) tobacco, alcohol, illegal substances, and sexually explicit material;~~

~~(c)[(b)]~~ when in use, portable space heaters, fireplaces, and wood burning stoves;

~~(d)[(e)]~~ toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

~~(e)[(d)]~~ poisonous plants;

~~(f)[(e)]~~ matches or cigarette lighters;

~~(g) open flames;~~

~~(h)[(f)]~~ sharp objects, edges, corners, or points which could cut or puncture skin;

~~(i)[(g)]~~ for children age 4 and under, strings and cords long enough to encircle a child's neck, such as those found on pull toys, window blinds, or drapery cords;

~~(j)[(h)]~~ for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

~~(k)[(i)]~~ for children [under]age 3 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

~~(5)[(6)]~~ The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

~~(6)[(7)]~~ Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

~~(7)[(8)]~~ Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

~~(8)[(9)]~~ High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

~~(9)~~~~(10)~~ Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall be surrounded by cushioning materials, such as mats at least 1 inch thick, in a 3 foot use zone.

~~(b) Mats surrounding indoor stationary play equipment with a designated play surface over 18 inches in height shall be at least 2 inches thick, or shall meet ASTM Standard F1292.~~  
(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

~~(10)~~~~(11)~~ Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

~~(b) The cushioning material surrounding indoor stationary play equipment with a designated play surface over 3 feet in height shall meet ASTM Standard F1292.~~  
(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

~~(11)~~~~(12)~~ There shall be no trampolines in the indoor play area.

**R430-100-13. Parent Notification and Child Security.**

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

~~(3) The provider shall establish and follow a procedure for ensuring that persons dropping off or picking up a child sign the child in and out of the center.~~

~~(4) Caregivers may sign school age children out of the center when they leave for school, and into the center when they arrive from school.~~

~~(5) The sign in and sign out record shall include the time of day each child is signed in and out.~~

~~(6) Persons signing children in and out of the center shall use identifiers, such as a signature, initials, or electronic code.~~

~~(7) Only parents or persons with written authorization from parents may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.~~

~~(8) Persons picking up a child from the center shall provide proper identification.~~  
(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center by the person dropping the child off and picking the child up, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and shall have photo identification if they are unknown to the provider.

~~(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.~~

~~(4)~~~~(9)~~ The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up~~parent~~ shall sign the report on the day of occurrence.

~~(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.~~

~~(6)~~~~(10)~~ In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

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**R430-100-15. Child Nutrition.**

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) ~~Menus for~~Foods served by centers not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

Centers not currently participating and in good standing with the CACFP shall keep a six week record of foods served at each meal or snack.

~~(d)~~~~(e)~~ The provider shall post the current week's menu for parent review~~, and shall note any substitutions on the menus~~.

(2) The provider shall offer meals or snacks at least once every three hours.

(3) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) The provider shall post a list of children's food allergies and sensitivities in the food preparation area, and shall ensure that caregivers who serve food to children are aware of this information for the children in their assigned group.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's full name, and refrigerated if needed.

**R430-100-16. Infection Control.**

(1) Staff shall wash their hands thoroughly for at least 20 seconds with liquid soap and warm running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding children;
- (c) before and after diapering a child;

(d) after using the toilet or helping a child use the toilet; ~~(e) before and after diapering a child;~~  
~~(e)(4)~~ before administering medication;  
~~(f)(5)~~ after coming into contact with body fluids, including breast milk;  
~~(g)(6)~~ after playing with or handling animals;  
~~(h)(7)~~ when coming in from outdoors; and  
~~(i)(8)~~ after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly for at least 20 seconds with liquid soap and warm running water at the following times:

- before and after eating meals and snacks;
- after using the toilet;
- after coming into contact with body fluids;
- after playing with animals; and
- when coming in from outdoors.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

~~(5)(4)~~ The provider shall post handwashing procedures at each handwashing sink, and they ~~and~~ shall be followed.

~~(6)(5)~~ Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.

~~(6) Personal hygiene items such as combs, hair accessories, and toothbrushes shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.~~ (7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.

~~(8)(7)~~ The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

~~(9)(8)~~ Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

~~(10)(9)~~ If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

~~(11)(10)~~ The licensee shall ensure that all employees are tested for tuberculosis (TB) within two weeks of hire by an acceptable skin testing method~~the Mantoux Method of skin testing~~ and follow-up.

~~(12)(11)~~ If the ~~TB~~~~Mantoux~~ test is positive, the caregiver shall provide documentation from a health care provider detailing:

- the reason for the positive reaction;
- whether or not the person is contagious; and
- if needed, how the person is being treated.

~~(13)(12)~~ Persons with contagious TB shall not work or volunteer in the center.

~~(14)(13)~~ An employee having a medical condition which contra-indicates a TB test must provide documentation from a health care provider indicating they are exempt from testing, with an associated time frame, if applicable. The provider shall maintain this documentation in the employee's file.

~~(15)(14)~~ Children's clothing shall be changed promptly if they have a toileting accident.

~~(16)(15)~~ Children's clothing which is wet or soiled from body fluids:

(a) shall not be rinsed or washed at the center; and  
 (b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

~~(17)(16)~~ If the center uses potty chairs, the provider shall clean and disinfect them after each use.

~~(18)(17)~~ Staff who prepare food in the kitchen shall not change diapers or assist in toileting children.

~~(19)(18)~~ The center shall have a portable body fluid clean up kit.

- All staff shall know the location of the kit and how to use it.
- The provider shall use the kit to clean up spills of body fluids.
- The provider shall restock the kit as needed.

~~(20)(19)~~ The center shall not care for children who are ill with an infectious disease, except when a child shows signs of illness after arriving at the center.

~~(21)(20)~~ The provider shall separate children who develop signs of an infectious disease after arriving at the center from the other children in a safe, supervised location.

~~(22)(21)~~ The provider shall contact the parents of children who are ill with an infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.

~~(23)(22)~~ The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

~~(24)(23)~~ The provider shall post a parent notice at the center when any staff or child ~~ren have~~ has an infectious disease or parasite.

- The provider shall post the notice in a conspicuous location where it can be seen by all parents.
- The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

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#### **R430-100-20. Activities.**

(1) The provider shall post a daily schedule for preschool and school-age groups. The daily schedule shall include, at a minimum, meal, snack, nap/rest, and outdoor play times.

~~(2)(3)~~ Daily activities shall include outdoor play if weather permits.

~~(3)(2)~~ The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities in preschool and school age groups.

(4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.

(5) If off-site activities are offered:

- the provider shall obtain written parental consent for each activity in advance;
- caregivers shall take written emergency information and releases with them for each child in the group, which shall include:
  - the child's name;

- (ii) the parent's name and phone number;
  - (iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;
  - (iv) the names of people authorized by the parents to pick up the child; and
  - (v) current emergency medical treatment and emergency medical transportation releases;
  - (c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;
  - (d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;
  - (e) children shall wear or carry with them the name and phone number of the center, but children's names shall not be used on name tags, t-shirts, or other identifiers; and
  - (f) caregivers shall provide a way for children to wash their hands as specified in R430-100-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.
- (6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

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#### **R430-100-22. Animals.**

- (1) The provider shall inform parents of the types of animals permitted at the facility.
- (2) All animals at the facility shall be clean and ~~in good health~~ free of obvious disease or health problems that could adversely affect children.
- (3) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.
- (4) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.
- (5) Children shall not assist with the cleaning of animals or animal cages, pens, or equipment.
- (6) There shall be no animals or animal equipment in food preparation or eating areas.
- (7) Children shall not handle reptiles or amphibians.

#### **R430-100-23. Diapering.**

If the center diapers children, the following applies:

- (1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.
- (2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.
- (3) Caregivers shall not leave children unattended on the diapering surface.
- (4) The diapering surface shall be smooth, waterproof, and in good repair.
- (5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.
- (6) Caregivers shall clean and disinfect the diapering surface after each diaper change.
- (7) Caregivers shall wash their hands before and after each diaper change.

- (8) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.
- (9) The provider shall daily clean and disinfect containers where soiled diapers are placed.
- (10) If cloth diapers are used:
  - (a) they shall not be rinsed at the center; and
  - (b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diapering service container.
- (11) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.
- (12) Caregivers shall keep a written record daily for each ~~child~~ infant and toddler documenting their diaper changes. The record shall be completed within an hour of each diaper change, and shall include the time of ~~the~~ each diaper change and whether the diaper was wet, soiled, or both.
- (13) Care givers whose designated responsibility includes the care of diapered children shall not prepare food for children or staff outside of the classroom area used by the diapered children.

#### **R430-100-24. Infant and Toddler Care.**

If the center cares for infants or toddlers, the following applies:

- (1) The provider shall not mix infants and toddlers with older children, unless there are 8 or fewer children present at the center.
- (2) Infants and toddlers shall not use outdoor play areas at the same time as older children.
- (3) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.
- (4) The provider shall clean and sanitize high chair trays prior to each use.
- (5) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.
- (6) Baby food, infant formula, and breast milk for infants that is brought from home for an individual child's use must be:
  - (a) labeled with the child's name;
  - (b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;
  - (c) kept refrigerated if needed; and
  - (d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.
- (7) Infant formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.
- (8) ~~Breast milk shall not be microwaved.~~ To prevent burns, heated bottles shall be thoroughly shaken and tested for temperature before being fed to children.
- (9) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.
- (10) Only one infant shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.
- (11) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

- (12) Infant cribs must:
- (a) have tight fitting mattresses;
  - (b) have slats spaced no more than 2-3/8 inches apart;
  - (c) have at least 20 inches from the top of the mattress to the top of the crib rail; and
  - (d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails.
- (13) Infants shall ~~not be placed on their stomachs~~~~[be placed on their backs]~~ for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.
- (14) Each infant and toddler shall follow their own pattern of sleeping and eating.
- (15) Caregivers shall keep a written record daily for each infant documenting their eating and sleeping patterns. The record shall be completed within an hour of each feeding or nap, and shall include the food and beverages eaten, and the times the child slept.
- (16) Infant walkers with wheels are prohibited.
- (17) Infants and toddlers shall not have access to objects made of styrofoam.
- (18) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.
- (19) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(20) Awake infants shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(21) Mobile infants and toddlers shall have freedom of movement in a safe area.

(22) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. There shall be enough toys for each child in the group to be engaged in play with toys.

(23) All toys used by infants and toddlers shall be cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth; and
- (c) after being contaminated by body fluids.

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**KEY: child care facilities, child care, child care centers**  
**Date of Enactment or Last Substantive Amendment: 2006**  
**Notice of Continuation: January 15, 2003**  
**Authorizing, Implemented, or Interpreted Law: 26-39**

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**End of the Notices of Changes in Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

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## Agriculture and Food, Animal Industry

### R58-2

#### Diseases, Inspections and Quarantines

##### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 28925  
FILED: 08/15/2006, 09:46

##### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-2-2(1)(c)(ii) authorizes the Department to initiate, implement, and administer plans and programs to prevent the spread of diseases among livestock.

Section 4-31-15 requires any person to report any symptoms of vesicular disease.

Section 4-31-17 authorizes the department to quarantine any infected domestic animals to prevent the spread of infectious or contagious diseases

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to enable the State Veterinarian to monitor and maintain freedom from certain diseases entering the state, to quarantine and control disease outbreaks when they occur, and to be compliant with federal rules regarding identification of animals and premises that are involved in intrastate and interstate movements. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
ANIMAL INDUSTRY  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3034, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews, Mike Marshall, or Earl Rogers at the above address, by phone at 801-538-7103, 801-538-7160, or 801-538-7162, by FAX at 801-538-7126, 801-538-7169, or 801-538-7169, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov), [mmarshall@utah.gov](mailto:mmarshall@utah.gov), or [erogers@utah.gov](mailto:erogers@utah.gov)

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 08/15/2006



## Agriculture and Food, Animal Industry

### R58-4

#### Use of Animal Drugs and Biologicals in the State of Utah

##### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 28926  
FILED: 08/15/2006, 09:58

##### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-5-17 authorizes the Department of Agriculture and Food to make and enforce rules that conform, as far as practicable, with those promulgated under the federal act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to monitor and control the use of certain drugs, biologicals, and vaccines within the state of Utah, some of which may contain live pathogens that could cause harm or introduce disease to certain industry segments. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
ANIMAL INDUSTRY  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3034, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews or Earl Rogers at the above address, by phone at 801-538-7103 or 801-538-7162, by FAX at 801-538-7126 or 801-538-7169, or by Internet E-mail at kmathews@utah.gov or erogers@utah.gov

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 08/15/2006

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

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 28912  
FILED: 08/04/2006, 14:14

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-19a-203 grants the Career Service Review Board rulemaking authority to carry out the statutory provisions of the State's Grievance and Appeal Procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the last five-year review, the Career Service Review Board has received only one comment concerning its rules. The commentator petitioned the Career Service Review Board to draft rules

defining "wages" and "salary". This request was satisfactorily responded to with an explanation that such a definition was outside the statutory authority of the Career Service Review Board. No further action was pursued by the commentator.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule subject to this review is essential to carry out the legislative intent of the State Grievance and Appeal Procedures codified at Title 67, Chapter 19a. The grievance process is functioning well and State employees as well as management expect it to continue. This rule is necessary to assure that the process continues to address employee grievances in a fair and judicious manner, and therefore, this rule should be continued.

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

CAREER SERVICE REVIEW BOARD  
ADMINISTRATION  
Room 1120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Robert W. Thompson at the above address, by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at bthompson@utah.gov

AUTHORIZED BY: Robert W. Thompson, Administrator

EFFECTIVE: 08/04/2006

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**Human Services, Administration  
R495-880  
Adoption Assistance**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 28927  
FILED: 08/15/2006, 10:23

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-4a-905 requires the Department of Human Services to establish advisory committees in each region and defines the membership of the committees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The adoption assistance committees provide a valuable resource for department staff and the public. The presence of this rule within the department rules ensures a consistency and impartiality that is important in creating fair outcomes for members of the public. In addition, current law clearly requires the Department create and make rules relating to these committees. Therefore, this rule should be continued.

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

HUMAN SERVICES  
ADMINISTRATION  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Adam F Trupp at the above address, by phone at 801-538-4462, by FAX at 801-538-4016, or by Internet E-mail at AFTRUPP@utah.gov

AUTHORIZED BY: Lisa-Michele Church, Executive Director

EFFECTIVE: 08/15/2006

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**Insurance, Administration**  
**R590-178**  
**Securities Custody**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 28914  
FILED: 08/07/2006, 13:32

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) gives the commissioner the authority to make rules to implement the provisions of Title 31A. Section 31A-2-206

gives the commissioner the authority to write rules regarding the receipt and handling of deposited securities. Section 31A-4-108 allows the commissioner to write rules to safeguard securities and ensure that they are not loaned to other insurers. Section R590-178-4 sets standards, guidelines, and forms to be used when an insurer transfers their securities to a custodian for.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department is now in the process of making changes to this rule to make it conform with conditions and procedures in holding and transferring of securities. The department has received comments that has helped us understand the Federal Reserve book-entry system that we are making a part of the rule. No other comments have been received

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides requirements for custodians to follow to protect the invested assets of the company. Without it, insurers could place their investments under risky custodial arrangements, or situations in which one is not provided that defines the responsibilities of the custodian. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
Room 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 08/07/2006

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

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### Community and Culture

#### History

No. 28910 (filed 08/02/2006 at 1:31 p.m.): R212-7. Cultural Resource Management.

ENACTED OR LAST REVIEWED: 09/26/2001 (No. 24076, 5YR, filed 09/26/2001 at 11:15 a.m., published 10/15/2001).

EXTENDED DUE DATE: 01/24/2007

**End of the Notices of Five-Year Review Extensions Section**

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Administrative Services

#### Fleet Operations, Surplus Property

No. 28766 (AMD): R28-1. State Surplus Property Disposal.

Published: June 15, 2006

Effective: August 2, 2006

#### Records Committee

No. 28776 (AMD): R35-1. State Records Committee Appeal Hearing Procedures.

Published: July 1, 2006

Effective: August 9, 2006

### Commerce

#### Occupational and Professional Licensing

No. 28807 (AMD): R156-22-302c. Qualifications for Licensure - Experience Requirements.

Published: July 1, 2006

Effective: August 15, 2006

No. 28781 (AMD): R156-53-501. Administrative Penalties - Unlawful Conduct.

Published: July 1, 2006

Effective: August 15, 2006

No. 28779 (AMD): R156-63-503. Administrative Penalties.

Published: July 1, 2006

Effective: August 15, 2006

### Education

#### Administration

No. 28808 (AMD): R277-410-4. Transfer or Acceptance of Credit.

Published: July 1, 2006

Effective: August 8, 2006

No. 28812 (AMD): R277-459. Teachers' Supplies and Materials Appropriation.

Published: July 1, 2006

Effective: August 8, 2006

No. 28811 (AMD): R277-474. School Instruction and Human Sexuality.

Published: July 1, 2006

Effective: August 8, 2006

No. 28810 (AMD): R277-609. Standards for School District Discipline Plans.

Published: July 1, 2006

Effective: August 8, 2006

No. 28809 (AMD): R277-705-3. District Policy Explaining Credits Earned and Reciprocity for Credit for Demonstrated Competency.

Published: July 1, 2006

Effective: August 8, 2006

### Environmental Quality

#### Radiation Control

No. 28802 (AMD): R313-19-34. Terms and Conditions of Licenses.

Published: July 1, 2006

Effective: August 11, 2006

### Human Services

#### Child and Family Services

No. 28750 (NEW): R512-308. Out of Home Services, Guardianship Services and Placements.

Published: June 15, 2006

Effective: August 2, 2006

### Natural Resources

#### Wildlife Resources

No. 28801 (AMD): R657-6-21. Closed Areas.

Published: July 1, 2006

Effective: August 8, 2006

No. 28796 (AMD): R657-24. Compensation for Mountain Lion and Bear Damage.

Published: July 1, 2006

Effective: August 8, 2006

No. 28798 (AMD): R657-41. Conservation and Sportsman Permits.

Published: July 1, 2006

Effective: August 8, 2006

No. 28797 (AMD): R657-48. Implementation of the Wildlife Species of Concern and Habitat Designation Advisory Committee.

Published: July 1, 2006

Effective: August 8, 2006

## NOTICES OF RULE EFFECTIVE DATES

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### Public Safety

#### Driver License

No. 28782 (AMD): R708-26. Temporary Learner Permit Rule.

Published: July 1, 2006

Effective: August 8, 2006

No. 28783 (AMD): R708-27. Certification of Driver Education Teachers in the Public Schools to Administer Knowledge and Driving Skills Tests.

Published: July 1, 2006

Effective: August 8, 2006

No. 28787 (AMD): R708-32-4. Access.

Published: July 1, 2006

Effective: August 8, 2006

No. 28784 (NEW): R708-42. Driver Address Record.

Published: July 1, 2006

Effective: August 8, 2006

No. 28785 (NEW): R708-43. Yes or No Notification.

Published: July 1, 2006

Effective: August 8, 2006

No. 28786 (NEW): R708-44. Citation Monitoring Service.

Published: July 1, 2006

Effective: August 8, 2006

### Tax Commission

#### Administration

No. 28804 (AMD): R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14.

Published: July 1, 2006

Effective: August 7, 2006

No. 28731 (AMD): R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

Published: June 1, 2006

Effective: September 1, 2006

#### Motor Vehicle

No. 28806 (AMD): R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

Published: July 1, 2006

Effective: August 7, 2006

### Workforce Services

#### Employment Development

No. 28760 (AMD): R986-600. Workforce Investment Act.

Published: June 15, 2006

Effective: August 9, 2006

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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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, 2006, including notices of effective date received through August 15, 2006, the effective dates of which are no later than September 1, 2006. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Administrative Services</b>					
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	28586	EMR	04/15/2006	2006-8/57
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	28608	AMD	06/01/2006	2006-9/10
R23-1	Procurement of Construction	28609	AMD	06/01/2006	2006-9/3
R23-2	Procurement of Architect-Engineer Services	28607	AMD	06/01/2006	2006-9/12
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	28384	AMD	01/25/2006	2005-24/2
R25-7	Travel-Related Reimbursements for State Employees	28702	AMD	07/01/2006	2006-10/2
<u>Fleet Operations</u>					
R27-1	Definitions	28474	5YR	01/30/2006	2006-4/33
R27-1	Definitions (5YR EXTENSION)	28279	NSC	01/30/2006	Not Printed

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R27-2	Fleet Operations Adjudicative Proceedings	28475	5YR	01/30/2006	2006-4/33
R27-3	Vehicle Use Standards	28477	5YR	01/30/2006	2006-4/34
R27-3	Vehicle Use Standards (5YR EXTENSION)	28280	NSC	01/30/2006	Not Printed
R27-7	Safety and Loss Prevention of State Vehicles	28469	5YR	01/20/2006	2006-4/34
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	28766	AMD	08/02/2006	2006-12/3
R28-2	Surplus Firearms	28496	5YR	02/07/2006	2006-5/47
<u>Information Technology Services</u>					
R29-1	Division of Information Technology Services Adjudicative Proceedings	28788	5YR	06/08/2006	2006-13/61
R29-1	Technology Services Adjudicative Proceedings	28828	NSC	06/22/2006	Not Printed
R29-2	Telecommunications Services and Requirements	28794	NSC	06/22/2006	Not Printed
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	28436	NSC	02/22/2006	Not Printed
R33-1-1	Definitions	28445	AMD	02/21/2006	2006-2/3
R33-2-101	Delegation of Authority of the Chief Procurement Officer	28437	NSC	02/22/2006	Not Printed
R33-3	Source Selection and Contract Formation	28447	AMD	02/21/2006	2006-2/5
R33-4	Specifications	28438	NSC	02/22/2006	Not Printed
R33-5	Construction and Architect-Engineer Selection	28448	NSC	02/22/2006	Not Printed
R33-7	Cost Principles	28439	NSC	02/22/2006	Not Printed
R33-8	Property Management	28440	NSC	02/22/2006	Not Printed
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	28462	AMD	03/14/2006	2006-3/3
R35-1	State Records Committee Appeal Hearing Procedures	28776	AMD	08/09/2006	2006-13/4
<u>Risk Management</u>					
R37-1	Risk Management General Rules	28413	AMD	03/31/2006	2006-1/4
R37-4	Adjusted Utah Governmental Immunity Limitations on Judgments	28667	R&R	07/01/2006	2006-10/5
<b>Agriculture and Food</b>					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	28552	5YR	03/16/2006	2006-8/69
R51-4	ADA Complaint Procedure	28553	5YR	03/16/2006	2006-8/69
<u>Animal Industry</u>					
R58-2	Diseases, Inspections and Quarantines	28925	5YR	08/15/2006	2006-17/65
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	28926	5YR	08/15/2006	2006-17/65
R58-10	Meat and Poultry Inspection	28506	AMD	04/03/2006	2006-5/2
R58-14	Holding Live Raccoons or Coyotes in Captivity	28971	5YR	08/29/2006	Not Printed
<u>Marketing and Development</u>					
R65-7	Horse Racing.	28970	5YR	08/29/2006	Not Printed
R65-8	Management of the Junior Livestock Show Appropriation	28558	5YR	03/16/2006	2006-8/70

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R68-7	Utah Pesticide Control Act	28554	5YR	03/16/2006	2006-8/70
R68-7	Utah Pesticide Control Act	28769	AMD	07/25/2006	2006-12/6
R68-8	Utah Seed Law	28452	5YR	01/09/2006	2006-3/38
R68-18	Quarantine Pertaining to Karnal Bunt	28505	5YR	02/10/2006	2006-5/48
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R70-330	Raw Milk for Retail	28555	5YR	03/16/2006	2006-8/71
R70-370	Butter	28556	5YR	03/16/2006	2006-8/71
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	28557	5YR	03/16/2006	2006-8/72
R70-410	Grading and Inspection of Shell Eggs With Standard Grade and Weight Classes	28471	5YR	01/24/2006	2006-4/35
R70-410-1	Authority	28485	AMD	03/20/2006	2006-4/4
R70-920	Packaging and Labeling of Commodities	28976	5YR	08/29/2006	Not Printed
R70-930	Method of Sale of Commodities	28974	5YR	08/29/2006	Not Printed
R70-940	Standards and Testing of Motor Fuel	28978	5YR	08/29/2006	Not Printed
<b>Alcoholic Beverage Control</b>					
<u>Administration</u>					
R81-1-7	Disciplinary Hearings	28708	AMD	08/25/2006	2006-11/24
R81-6	Special Use Permits	28946	5YR	08/23/2006	Not Printed
R81-7	Single Event Permits	28961	5YR	08/24/2006	Not Printed
R81-8	Manufacturers (Distillery, Winery, Brewery)	28962	5YR	08/24/2006	Not Printed
R81-9	Liquor Warehousing License	28963	5YR	08/24/2006	Not Printed
R81-10A-7	Draft Beer Sales/Minors on Premises	28431	NSC	01/01/2006	Not Printed
R81-11	Beer Wholesalers	28964	5YR	08/24/2006	Not Printed
R81-12	Manufacturer Representative (Distillery, Winery, Brewery)	28965	5YR	08/24/2006	Not Printed
<b>Capitol Preservation Board (State)</b>					
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R131-4	Procurement of Construction	28727	5YR	05/12/2006	2006-11/92
<b>Career Service Review Board</b>					
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R137-1	Grievance Procedure Rules	28912	5YR	08/04/2006	2006-17/66
<b>Commerce</b>					
<u>Administration</u>					
R151-1-2	Electronic Meetings	28664	AMD	06/15/2006	2006-10/7
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<u>Consumer Protection</u>					
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R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	28860	5YR	06/29/2006	2006-14/37
<u>Occupational and Professional Licensing</u>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	28621	AMD	06/19/2006	2006-10/8
R156-3a	Architect Licensing Act Rules	28429	AMD	04/03/2006	2006-2/15
R156-3a	Architect Licensing Act Rules	28429	CPR	04/03/2006	2006-5/44
R156-3a	Architect Licensing Act Rules	28604	5YR	04/10/2006	2006-9/39
R156-3a-501	Administrative Penalties - Unlawful Conduct	28671	NSC	05/10/2006	Not Printed
R156-9a	Uniform Athlete Agent Act Rules	28830	5YR	06/22/2006	2006-14/37
R156-17b	Pharmacy Practice Act Rules	28530	AMD	04/17/2006	2006-6/2
R156-17b	Pharmacy Practice Act Rules	28620	NSC	05/15/2006	Not Printed
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	28444	AMD	04/03/2006	2006-2/17
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	28444	CPR	04/03/2006	2006-5/45
R156-22-302c	Qualifications for Licensure - Experience Requirements	28807	AMD	08/15/2006	2006-13/6
R156-22-302d	Qualifications for Licensure - Examination Requirements	28773	AMD	07/25/2006	2006-12/7
R156-31b	Nurse Practice Act Rules	28365	AMD	01/23/2006	2005-24/3
R156-37	Utah Controlled Substances Act Rules	28310	AMD	02/16/2006	2005-22/8
R156-37	Utah Controlled Substances Act Rules	28310	CPR	02/16/2006	2006-2/35
R156-38b	State Construction Registry Rules	28848	AMD	08/22/2006	2006-14/2
R156-40	Recreational Therapy Practice Act Rules	28674	AMD	06/22/2006	2006-10/11
R156-40	Recreational Therapy Practice Act Rules	28831	NSC	07/11/2006	Not Printed
R156-44a	Nurse Midwife Practice Act Rules	28352	AMD	01/05/2006	2005-23/4
R156-46a	Hearing Instrument Specialist Licensing Act Rules	28732	AMD	07/11/2006	2006-11/32
R156-46b	Division Utah Administrative Procedures Act Rules	28673	5YR	04/25/2006	2006-10/86
R156-47b	Massage Therapy Practice Act Rules	28478	5YR	01/31/2006	2006-4/35
R156-47b	Massage Therapy Practice Act Rules	28748	AMD	07/31/2006	2006-12/9
R156-50	Private Probation Provider Licensing Act Rules	28550	5YR	03/13/2006	2006-7/33
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R156-55b	Electricians Licensing Rules	28611	AMD	06/01/2006	2006-9/15
R156-55b	Electricians Licensing Rules	28772	NSC	06/12/2006	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	28286	AMD	01/01/2006	2005-21/6
R156-56-707	Statewide Amendments to the IPC	28285	AMD	01/01/2006	2005-21/25
R156-56-707	Statewide Amendments to the IPC	28805	NSC	06/29/2006	Not Printed
R156-56-711	Statewide Amendments to the IRC	28427	NSC	02/23/2006	Not Printed
R156-60b	Marriage and Family Therapist Licensing Act Rules	28672	AMD	06/19/2006	2006-10/13
R156-60c-502	Unprofessional Conduct	28603	AMD	06/01/2006	2006-9/17
R156-60d	Substance Abuse Counselor Act Rules	28605	5YR	04/10/2006	2006-9/39
R156-63-503	Administrative Penalties	28345	AMD	01/10/2006	2005-23/5
R156-63-503	Administrative Penalties	28779	AMD	08/15/2006	2006-13/10
R156-67	Utah Medical Practice Act Rules	28837	5YR	06/26/2006	2006-14/38

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R156-69	Dentist and Dental Hygienist Practice Act Rules	28829	AMD	08/22/2006	2006-14/5
R156-73	Chiropractic Physician Practice Act Rules	28824	5YR	06/19/2006	2006-14/39
R156-74	Certified Shorthand Reporters Licensing Act Rules	28428	AMD	02/16/2006	2006-2/24
<u>Real Estate</u>					
R162-2-2	Licensing Procedure	28520	AMD	06/21/2006	2006-5/4
R162-2-2	Licensing Procedure	28520	CPR	06/21/2006	2006-9/36
R162-8-8	Administrative Proceedings	28597	AMD	06/21/2006	2006-9/18
R162-10	Administrative Procedures	28668	AMD	06/21/2006	2006-10/16
R162-10-1	Formal Adjudicative Proceedings	28494	AMD	04/19/2006	2006-5/7
R162-102-3	Renewal	28665	AMD	06/28/2006	2006-10/19
R162-105-1	Scope of Authority	28666	AMD	06/28/2006	2006-10/20
R162-202-10	Principal Lending Manager Experience Requirement	28499	AMD	04/05/2006	2006-5/7
R162-203	Status Changes	28450	AMD	03/09/2006	2006-3/4
R162-204	Residential Mortgage Record Keeping Requirements	28497	AMD	04/05/2006	2006-5/8
R162-205	Residential Mortgage Unprofessional Conduct	28498	AMD	04/05/2006	2006-5/9
R162-207-3	Renewal Process	28451	AMD	03/09/2006	2006-3/5
R162-209	Administrative Proceedings	28476	5YR	01/30/2006	2006-4/36
R162-209	Administrative Proceedings	28849	AMD	08/29/2006	2006-14/6
<b>Community and Culture</b>					
<u>Housing and Community Development</u>					
R199-11	Community Development Block Grants (CDBG)	28647	5YR	04/19/2006	2006-10/86
R199-11	Community Development Block Grants (CDBG)	28740	AMD	07/25/2006	2006-12/15
<u>History</u>					
R212-3	Memberships, Sales, Gifts, Bequests, Endowments	28898	5YR	07/27/2006	2006-16/34
R212-4	Archaeological Permits	28907	5YR	08/01/2006	2006-16/34
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R212-8	Preservation Easements	28896	5YR	07/27/2006	2006-16/35
R212-9	Board of State History as the Cultural Sites Review Committee Review Board	28897	5YR	07/27/2006	2006-16/36
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R986-200	Family Employment Program	28537	AMD	05/01/2006	2006-6/19
R986-200	Family Employment Program	28755	AMD	08/01/2006	2006-12/58
R986-300	Refugee Resettlement Program	28757	AMD	08/01/2006	2006-12/62
R986-300-305	Failure to Comply with an Employment Plan	28425	AMD	03/01/2006	2006-1/31
R986-400	General Assistance and Working Toward Employment	28693	AMD	06/22/2006	2006-10/81
R986-400	General Assistance and Working Toward Employment	28759	AMD	08/01/2006	2006-12/64
R986-600	Workforce Investment Act	28760	AMD	08/09/2006	2006-12/65
R986-600-604	Adults, Youth, and Dislocated Workers	28400	NSC	01/01/2006	Not Printed
R986-600-652	Determining Eligibility for Training Providers	28890	NSC	08/09/2006	Not Printed
R986-700	Child Care Assistance	28758	AMD	08/01/2006	2006-12/71
R986-700-705	Eligible Providers and Provider Settings	28561	NSC	04/17/2006	Not Printed
R986-700-709	Employment Support (ES) CC	28481	AMD	04/12/2006	2006-4/31
R986-800-803	Available Services	28762	AMD	08/01/2006	2006-12/76
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R994-308	Bond or Security Requirement	28722	5YR	05/09/2006	2006-11/98
R994-401-203	Retirement or Disability Retirement Income	28763	AMD	07/26/2006	2006-12/79
R994-403-202	Qualifying Elements for Approval of Training	28861	AMD	08/22/2006	2006-14/31
R994-406	Fraud, Fault and Nonfault Overpayments	28764	AMD	07/26/2006	2006-12/80
R994-406-302	Repayment and Collection of Fault Overpayments	28480	NSC	02/22/2006	Not Printed
R994-406-401	Claimant Fraud	28877	NSC	07/27/2006	Not Printed

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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	5YR = Five-Year Review
EXD = Expired	

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<u>access</u> Environmental Quality, Drinking Water	28421	R309-545-7	AMD	03/08/2006	2006-1/19

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<b><u>accidents</u></b>					
Administrative Services, Fleet Operations	28469	R27-7	5YR	01/20/2006	2006-4/34
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<b><u>administrative procedures</u></b>					
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Commerce, Occupational and Professional Licensing	28673	R156-46b	5YR	04/25/2006	2006-10/86
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	28406	R212-3	NSC	01/01/2006	Not Printed
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	28907	R212-4	5YR	08/01/2006	2006-16/34
Community and Economic Development, Community Development, History	28407	R212-4	NSC	01/01/2006	Not Printed
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	28418	R309-405-4	AMD	03/08/2006	2006-1/14
Environmental Quality, Radiation Control	28872	R313-17	5YR	07/10/2006	2006-15/31
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	28536	R652-20-1000	AMD	07/13/2006	2006-6/14
	28853	R652-41	5YR	06/28/2006	2006-14/58
	28854	R652-80	5YR	06/28/2006	2006-14/59
	28770	R652-123	NEW	08/28/2006	2006-12/34
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	28563	R850-5-200	AMD	05/16/2006	2006-8/49
	28482	R850-21-900	AMD	03/20/2006	2006-4/14
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	28545	R307-101-2	AMD	06/16/2006	2006-7/5
	28822	R307-110	5YR	06/16/2006	2006-14/40
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	28320	R307-110-9	CPR	06/16/2006	2006-7/24
	28226	R307-170	AMD	01/05/2006	2005-19/6
	28820	R307-210	5YR	06/16/2006	2006-14/41
	28601	R307-210-1	AMD	06/15/2006	2006-9/19
	28821	R307-223	5YR	06/16/2006	2006-14/41
	28544	R307-325	AMD	06/16/2006	2006-7/8
	28325	R307-401	CPR	06/16/2006	2006-7/25
	28819	R307-401	5YR	06/16/2006	2006-14/42
	28325	R307-401	R&R	06/16/2006	2005-23/14
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	28816	R307-405	5YR	06/16/2006	2006-14/45
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	28468	R307-801-5	NSC	02/22/2006	Not Printed
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	28602	R307-204	5YR	04/07/2006	2006-9/40
	28459	R307-204	NSC	04/07/2006	Not Printed
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	28431	R81-10A-7	NSC	01/01/2006	Not Printed
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<b><u>alternative onsite wastewater systems</u></b>					
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	28429	R156-3a	CPR	04/03/2006	2006-5/44
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	28502	R307-801	AMD	06/16/2006	2006-5/22
	28468	R307-801-5	NSC	02/22/2006	Not Printed
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	28627	R651-207	5YR	04/18/2006	2006-10/91
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	28628	R651-208	5YR	04/18/2006	2006-10/91
	28650	R651-210	NSC	05/10/2006	Not Printed
	28629	R651-210	5YR	04/18/2006	2006-10/92
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	28631	R651-212	5YR	04/18/2006	2006-10/93
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	28632	R651-213	5YR	04/18/2006	2006-10/93
	28633	R651-214	5YR	04/18/2006	2006-10/94
	28510	R651-215	5YR	02/13/2006	2006-5/49
	28652	R651-216	NSC	05/10/2006	Not Printed
	28634	R651-216	5YR	04/18/2006	2006-10/94
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	28655	R651-220	NSC	05/10/2006	Not Printed
	28638	R651-220	5YR	04/18/2006	2006-10/96
	28639	R651-221	5YR	04/18/2006	2006-10/97
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	28657	R651-226	NSC	05/10/2006	Not Printed
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	28839	R616-2	NSC	06/30/2006	Not Printed
	28257	R616-2-3	AMD	01/01/2006	2005-20/43
	28564	R616-2-3	AMD	05/17/2006	2006-8/42
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	28716	R539-1-8	EMR	05/05/2006	2006-11/88
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