

UTAH STATE BULLETIN

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

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Division of Administrative Rules, Salt Lake City 84114

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NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 17, 2007, 12:00 a.m., and February 1, 2007, 11:59 p.m. are included in this, the February 15, 2007, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (· · · · ·) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least March 19, 2007. 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 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 June 15, 2007, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE 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 Section 63-46a-4; and Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

**Administrative Services, Facilities
Construction and Management
R23-25
Administrative Rules Adjudicative
Proceedings**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29474

FILED: 02/01/2007, 10:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R23-25, under the authority of the Utah Administrative Procedures Act and the Utah State Building Board, sets forth the standards and procedures governing all adjudicative proceedings of the Utah State Building Board and the Division of Facilities Construction and Management (DFCM). The Five-Year Notice of Review and Statement of Continuation for this rule was filed with the Division of Administrative Rules on 09/06/2006, with the intention of presenting amendments to the rule at a future Building Board meeting for consideration and approval. Amendments are being made to comply with current law.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide technical corrections and clarifications in compliance with the Utah Administrative Procedures Act, Section 63-46b-0.5 et seq.; provide clarification of the provisions for procedures of adjudicative proceedings; and adds provisions to include allowing agency reconsideration, and waiver provisions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63a-5-103(1)(e) and Section 63-46b-0.5 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The amendments to this rule provide technical corrections in compliance with the Administrative Procedures Act, Section 63-46b-0.5 et seq., make clarifications, and housekeeping changes. Therefore, DFCM determines that there is no cost or savings impact as result of these amendments.

❖ LOCAL GOVERNMENTS: The amendments to this rule do not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not require services from local governments.

❖ OTHER PERSONS: The amendments to this rule provide technical corrections in compliance with the Administrative Procedures Act, Section 63-46b-0.5 et seq., make clarifications, and housekeeping changes. Therefore, this rule does not impose any additional requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide technical corrections in compliance with the Administrative Procedures Act, Section 63-46b-0.5 et seq., make clarifications, and housekeeping changes. DFCM determines that there are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule provide technical corrections in compliance with the Administrative Procedures Act, Section 63-46b-0.5 et seq., make clarifications, and housekeeping changes. Therefore, the amendments to this rule do not create an impact on businesses. Kim Hood, Executive Director

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:

Debbie Merrill, Priscilla Anderson, or Alan Bachman at the above address, by phone at 801-538-3240, 801-538-9595, or 801-538-3105, by FAX at 801-538-3313, 801-538-3378, or 801-538-3313, or by Internet E-mail at debramerrill@utah.gov, phanderson@utah.gov, or abachman@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Keith Stepan, Director

R23. Administrative Services, Facilities Construction and Management.

R23-25. Administrative Rules Adjudicative Proceedings.

R23-25-1. Purpose and Authority.

(1) Under the authority of Section 63a-5-103(1)(e), this rule establishes procedures for adjudicative proceedings in accordance with the Utah Administrative Procedures Act, Section 63-46b-0.5 et seq., except as provided in Subsections (2) through (4).

(2) This rule does not apply to an Agency action that is not governed by the Administrative Procedures Act and the laws of the State of Utah, including:

(a) Subsection 63-46b-1(2), Administrative Procedures Act;

(b) Title 63, Chapter 56, Utah Procurement Code;

(c) Title 63a, Chapter 5, Part 1, State Building Board; and

(d) Title 63a, Chapter 5, Part 2, Division of Facilities Construction and Management.

(3)(a) The provisions of this rule do not govern actions or proceedings that a federal statute or regulation requires be conducted solely in accordance with federal procedures.

(b) If a federal statute or regulation requires a modification to these procedures, the federal procedures prevail.

(4) To the extent that this rule conflicts with a similar rule governing the agency, the conflicting provisions of the other rule shall govern.

R23-25-2. Designation of Proceedings.

~~[(4)]~~The Agency designates all agency action subject to the scope and applicability of the Utah Administrative Procedures Act, Section 63-46b-~~[(1)]~~0.5 et seq. as informal proceedings.

~~[(2) Pursuant to Section 63-46b-1(2)(g), all agency action under the authority of the Utah Procurement Code, Section 63-56-1 et seq., Administrative Rules R23-1, R23-2, R23-4, R23-20 and R23-21 are not governed by the Administrative Procedures Act. The exclusion provided by Section 63-46b-1(2)(g) shall include all matters relating to the procurement of supplies, services, construction, professional services such as architects, engineers and project managers, debarment proceedings, protest relating to the solicitation and award of contracts and contract controversies based upon breach of contract, mistake, misrepresentation, or other causes for contractual modification or rescission, and all leasehold space in real property to be occupied by the state or any department, commission, institution or agency of the state as required pursuant to Section 63A-5-204.~~

R23-25-2. Authority.

~~This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63-46b-1, et seq. and under the authority of the Utah State Building Board, Section 63A-5-101 and the Department of Administrative Services, Division of Facilities Construction and Management, Section 63A-5-201 et seq.~~

R23-25-3. Definitions.

(1) The terms used in this rule are defined in Section 63-46b-2.

(2) In addition:

~~[(2)a]~~ "Agency" means the Utah State Building Board ~~[and]~~ or the Division of Facilities Construction and Management.

~~(b) "Presiding officer" means the director of the Division of Facilities Construction and Management, or the director's designee.~~

R23-25-4. Procedure.

~~[In compliance with]~~Pursuant to Section 63-46b-5, the procedure for informal adjudicative proceedings is as follows:

(1)~~(a)~~ The respondent to a notice of agency action or request for agency action ~~[pursuant to Section 63-46b-3, shall file with the agency an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action]~~ shall file and serve a written response, signed by the respondent or ~~[his]~~the respondent's representative, within 30 days ~~[following receipt of the adverse party's pleading]~~of mailing of the notice of agency action, or within 30 days of notice of the Agency setting the matter for an informal adjudicative proceeding.

~~(b) The response shall be filed with the [agency]~~Agency and one copy shall be sent by mail to each party.

~~(c) Failure to file a responsive pleading [without good cause] may result in a default pursuant to Section 63-46b-11.~~

(2)~~(a)~~ A hearing shall be provided to any party to the proceeding requesting a hearing.

~~(b) The Agency shall hold a hearing if required by statute or rule.~~

~~(c) A request for a hearing shall be in writing and filed [with the agency no later than ten days following receipt of the adverse party's answer or responsive pleading]at the same time the respondent submits a written response as provided in Subsection (1)(a).~~

(3) In the hearing, the parties named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(4) Hearings will be held only after ~~[a-]~~timely notice~~[has been mailed]~~ to all parties.

(5)~~(a)~~ Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

~~(b) Each party to the proceeding [will be]is responsible for ensuring the appearance and associated costs of [its own] witnesses.~~

(6) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(7) Intervention is prohibited, except that intervention is allowed where a Federal statute or rule requires that the state ~~[permit]~~allow intervention.

(8) All hearings ~~[shall be open to all parties]~~are open to all parties, except the presiding officer may take appropriate measures to preserve the integrity of the hearing, including the exclusion of a witness if requested by a party, and the protection of confidentiality of records or other information protected by law.

(9) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing~~[within the time prescribed by these rules]~~, the presiding officer shall issue a signed order in ~~[writing that states the following:]~~accordance with Subsections 63-46b-5(1)(i), (j), and (k).

~~[(a)]~~10 ~~[-The decision;~~

~~-(b) The reasons for the decision;~~

~~-(c) A notice of any right of administrative or judicial review available to the parties; and~~

~~-(d) The time limits for filing an appeal or requesting a review.~~

~~(10) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.~~

~~(11) A copy of the presiding officer's order shall be promptly mailed to each of the parties.~~

~~(12)-]~~All hearings shall be recorded at the agency's expense. ~~[Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.]~~

~~[(13)]~~11 Nothing in this section restricts or precludes any investigative right or power given to ~~[an]~~the agency by~~[-another]~~ statute.

R23-25-5. Agency Review or Reconsideration.

~~[(1) Pursuant to the Utah Administrative Procedures Act, Section 63-46b-12, the Agency does not enact a rule permitting agency review.~~

~~(1)(a) If the agency director is the presiding officer, and not a designee, there is no agency review permitted pursuant to Section 63-46b-12.~~

~~(b) If the agency director designates another person as the presiding officer, then a party may seek review of the presiding officer's order by filing a written request with the agency director.~~

(c) The requirements provided in Section 63-46b-12 shall apply to any agency review.

(2)(a) Nothing contained in this Rule prohibits a party from filing a petition for reconsideration pursuant to Utah Administrative Procedures Act, Section 63-46b-13.

(b) The requirements provided in Section 63-46b-13 shall apply to any agency reconsideration.

R23-25-6. Public Petition for Declaratory Orders.

Petitions for declaratory orders shall be made and processed in accordance with the Department of Administrative Services Rule R13-1.

R23-25-7. Emergency Orders.

Emergency orders may be issued by the agency in accordance with Section 63-46b-20.

R23-25-8. Exhaustion of Administrative Remedies.

(1) A person must exhaust their administrative remedies in accordance with Section 63-46b-14 prior to seeking judicial review.

(2) In any adjudicative proceeding before the agency there shall be an opportunity for an affected party to respond and participate.

(3) Only an aggrieved party that has exhausted the available and adequate remedies before the presiding officer, including any agency review or reconsideration by the agency director, may seek judicial review of the final decision of the agency director.

R23-25-9. Civil Enforcement.

In addition to any other remedy provided by law or any other rule applicable to the agency, civil enforcement may be pursued as provided under Section 63-46b-19.

R23-25-10. Waivers.

(1) In addition to any other waiver allowed by law or this rule, any procedural matter, including any right to notice or hearing, may be waived by the affected person by signing a written waiver in a form approved by the agency.

(2) The waiver provision of this rule may not be construed to prohibit a finding of default as provided in Subsection R23-25-4(1)(c) or Section 63-46b-11.

R23-25-11. Agency Rights and Remedies.

Agency reserves all rights, remedies and available procedures under the Utah Administrative Procedures Act, Section 63-46b-[+],0.5, et seq., unless the reservation is in conflict with the provisions of this Rule.

KEY: administrative law, adjudicative proceedings

Date of Enactment or Last Substantive Amendment: [1994]2007

Notice of Continuation: September 6, 2006

Authorizing, and Implemented or Interpreted Law: 63-46b-1



Alcoholic Beverage Control,
Administration
R81-1-6
Violation Schedule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 29439

FILED: 01/26/2007, 14:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is being proposed at the direction of the Alcoholic Beverage Control (ABC) Commission. The commissioners feel that any second or subsequent occurrence of a violation in a three-year period within a given penalty range should aggravate the violation for purposes of assessing a penalty to a licensee or the employee of a licensee.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule are found in Subsection R81-1-6(4) and address violations in the minor, moderate, and serious penalty categories. The amendment authorizes the Commission and presiding officers to adjust penalties for second and subsequent violations of any type within a penalty range. As now written, the rule only authorizes these penalty adjustments if the second or subsequent violations are of exactly the same type as violations adjudicated in prior proceedings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--This amendment only authorizes the Commission and presiding officers to adjust penalties assessed to licenses with multiple violations of the law. Implementation of this rule amendment will not affect the state budget.
- ❖ LOCAL GOVERNMENTS: None--This amendment affects administrative actions taken by the Department Alcoholic Beverage Control (DABC) against alcoholic beverage licensees. Local governments are not involved in these administrative actions.
- ❖ OTHER PERSONS: None--This amendment does not affect all licensees as a whole. It only affects licensees facing penalties for violations of the law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any licensee who violates the law more than once within a three-year period may face heavier penalties as a result of this proposed rule amendment. The amendment authorizes the Commission or presiding officers to adjust the penalty when a licensee has second or subsequent violations of any laws within a given penalty category. Because there are many circumstances that may potentially aggravate or mitigate a violation, there is no way of knowing what the exact fiscal effect may be for any individual licensee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The ABC Commission and DABC take violations of the law by licensees very seriously. This proposed rule amendment may potentially have a fiscal impact on licensees who repeatedly violate the law by authorizing the Commission and presiding officers to use more flexibility in assessing violation penalties. It is hoped

that the fiscal impact of this rule amendment will have the positive effect of making licensees who repeatedly violate the laws begin to take more seriously the responsibility of holding an alcoholic beverage license. Kenneth F. Wynn, Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Kenneth F. Wynn, Director

**R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-6. Violation Schedule.**

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

.....

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a \$25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or

agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of ~~[the same]~~ any type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a \$100 to \$500 fine for the licensee or permittee, and a letter of admonishment to a \$25 fine for the officer, employee or agent.

(iii) Third occurrence of ~~[the same]~~ any type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a \$200 to \$500 fine for the licensee or permittee and up to a \$50 fine for the officer, employee or agent.

(iv) More than three ~~[minor violations regardless of type]~~ occurrences of any type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$25,000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a \$1000 fine for the licensee or permittee, and a letter of admonishment to a \$50 fine for the officer, employee or agent.

(ii) Second occurrence of ~~[the same]~~ any type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$1000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(iii) Third occurrence of ~~[the same]~~ any type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$2000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(iv) More than three ~~[moderate violations regardless of type]~~ occurrences of any type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a \$2000 to \$25,000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension

and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, ~~and~~ or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$3000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(ii) Second occurrence of ~~the same~~ any type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$9000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(iii) More than two occurrences of any type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$9000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

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KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~November 22, 2006~~ 2007

Notice of Continuation: August 31, 2006

Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)



**Alcoholic Beverage Control,
Administration
R81-1-26
Criminal History Background Checks**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 29440

FILED: 01/26/2007, 14:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed at the direction of the Alcoholic Beverage Control (ABC) Commission for the purpose of implementing statutory provisions that require license applicants and their supervisory employees to have backgrounds free of certain criminal convictions.

SUMMARY OF THE RULE OR CHANGE: The licensing chapters of Title 32A prohibit the Commission from issuing alcoholic beverage licenses to individuals who have certain disqualifying convictions in their personal backgrounds. The prohibition is also extended to supervisory staff of license applicants. This proposed rule amendment sets guidelines for license applicants to follow in order to provide proof of criminal background history when applying for an alcoholic beverage license.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 32A-1-107, 32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--License applicants are required to pay any fees involved in obtaining a criminal background history. There are no costs to the state.

❖ **LOCAL GOVERNMENTS:** None--The requirement of a criminal background check is a statutory requirement of the Department of Alcoholic Beverage Control (DABC). Though local governments may have their own criminal background requirements, they are apart from those of the DABC and are not regulated by this proposed rule amendment.

❖ **OTHER PERSONS:** Virtually all alcoholic beverage license applicants will be required to provide proof of criminal background history. Utah residents may obtain a background check from the State Bureau of Criminal Investigation for a cost of \$10 per person. Applicants from outside Utah must obtain a background check from the FBI at a cost of \$18 per person. Because there is currently a waiting period of up to six months for FBI checks, this proposed rule provides that the applicant may get a background check from a third-party provider and be licensed while waiting for the FBI check to arrive. The cost of the third-party background check is approximately \$40 per person (and the applicant must still provide the FBI check when it becomes available).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Virtually all alcoholic beverage license applicants will be required to provide proof of criminal background history. Utah residents may obtain a background check from the State Bureau of Criminal Investigation for a cost of \$10 per person. Applicants from outside Utah must obtain a background check from the Federal Bureau of Investigations (FBI) at a cost of \$18 per person. Because there is currently a waiting period of up to

six months for FBI checks, this proposed rule provides that the applicant may get a background check from a third-party provider and be licensed while waiting for the FBI check to arrive. The cost of the third-party background check is approximately \$40 per person (and the applicant must still provide the FBI check when it becomes available).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: State law prohibits those with certain criminal convictions from holding alcoholic beverages licenses. Though there is a cost involved in obtaining a criminal background history, it is the only way the department and the ABC Commission can be certain an applicant meets this licensing requirement. Kenneth F. Wynn, Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies; and

(b) 32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons that have been convicted of certain criminal offenses from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least one year, shall submit a criminal history background report from the Utah Bureau of Criminal Identification, Department of Public Safety.

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than one year, shall submit a criminal history background report from the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a criminal history background report from the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to file a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(b) An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than providing the required F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant attests in writing that all request(s) for any required F.B.I. criminal history background report(s) have been submitted to the F.B.I. and provides the following information and documentation:

(A) the date the request(s) were submitted to the F.B.I.

(B) a copy of the written request(s) submitted to the F.B.I.

(C) a copy of the fingerprint card(s) submitted to the F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall

immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~November 22, 2006~~ 2007

Notice of Continuation: August 31, 2006

Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

◆ ————— ◆

Commerce, Consumer Protection

R152-22

Charitable Solicitations Act

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29427

FILED: 01/19/2007, 15:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In an effort to better determine whether violations of the Charitable Solicitations Act have occurred, the proposed rule filing requires that charitable organizations, professional fund

raisers, and fund raising counsel or consultants disclose on their application whether they have conducted activities regulated by the Charitable Solicitations Act, Title 13, Chapter 22, without being duly registered with the Division. The filing also makes corrections to statutory references.

SUMMARY OF THE RULE OR CHANGE: The proposed rule filing requires that charitable organizations, professional fund raisers, and fund raising counsel or consultants disclose whether they have conducted activities regulated by the Charitable Solicitations Act, Title 13, Chapter 22, without being duly registered with the Division. The filing also corrects statutory references.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 13-2-5, 13-22-6, 13-22-8, 13-22-9, and 13-22-10

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The filing has no impact on the cost to administer the rule. Consumer Protection will continue to evaluate application forms; the added time to assess the newly-required statements will be insignificant.

❖ LOCAL GOVERNMENTS: This filing does not affect local governments; therefore, there are no anticipated costs or savings to local governments. Local government neither regulate individuals under the Charitable Solicitations Act, nor do they engage in activities covered by the Act.

❖ OTHER PERSONS: Charitable organizations, professional fund raisers, and fund raising counsel or consultants will face a minimal amount of increased time to complete the application form by being required to disclose whether they have conducted activities regulated by the Charitable Solicitations Act without being duly registered.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Charitable organizations, professional fund raisers, and fund raising counsel or consultants will face a minimal amount of increased time to complete the application form by being required to disclose whether they have conducted activities regulated by the Charitable Solicitations Act without being duly registered.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated as a result of this rule filing beyond those addressed in the rule summary. Francine Giani, Executive Director

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

COMMERCE

CONSUMER PROTECTION

HEBER M WELLS BLDG

160 E 300 S

SALT LAKE CITY UT 84111-2316, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at tcopeland@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Kevin V Olsen, Director

R152. Commerce, Consumer Protection.**R152-22. Charitable Solicitations Act.****R152-22-3. Application for Charitable Organization Permit.**

(1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.

(2) A statement of collections and expenditures shall be executed on the form authorized by the division.

(3) Applicants or registrants shall submit to the division, on request:

(a) an updated copy of a financial statement prepared by an independent certified public accountant;

(b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) a copy of the applicant's or registrant's IRS Section ~~501(c)(3)~~ 501(c)(3) tax exemption letter, if applicable;

(g) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; ~~and~~

(h) a copy of the applicant's IRS Form 990, 990EZ or 990PF[-]; ~~and~~

~~(i) a statement as to whether the charitable organization has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.~~

(4) All initial applications and renewals of registration in accordance with Section ~~13-22-5~~ 13-22-6 shall be processed within twenty (20) business days after their receipt by the division.

R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.

(1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.

(2) The application shall include a copy of all contracts, agreements, or other documents showing:

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the

applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

(b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers; ~~and~~

(f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks[-]; ~~and~~

~~(g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.~~

(3) All initial applications and renewals of registration in accordance with Section ~~13-22-5~~ 13-22-9 shall be processed within twenty (20) business days after their receipt by the division.

KEY: charit[~~y~~ies], consumer protection, solicitations

Date of Enactment or Last Substantive Amendment: ~~December 22, 2006~~ 2007

Notice of Continuation: October 30, 2002

Authorizing, and Implemented or Interpreted Law: 13-2-5; 13-22-6; 13-22-8; 13-22-9; 13-22-10



Commerce, Occupational and Professional Licensing

R156-11a

Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29432

FILED: 01/22/2007, 17:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division had received input from interested parties requesting the changes being made in this rule filing regarding the definition for "advanced pedicures" and the curriculum for master esthetician programs with respect to lymphatic massage.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, amendments are being proposed to change the rule from plural to singular. In Section R156-11a-102, the definition of "advanced pedicure" is amended to allow master estheticians to use blades for the removal of dead skin, calluses, or corns,

and to use advanced implements and equipment for pedicures on clients. The rule amendment also removes lymphatic massaging of the lower leg from the definition of an "advanced pedicure". In Subsection R156-11a-703(17), changes are being proposed to further clarify the 200 hours of instruction in lymphatic massage. The proposed amendments change the 40 hours of training in manual lymphatic massage to 70 applications of one hour each. The 60 applications of one hour each of lymphatic massage by other means is changed to 90 hours of training. The changes in required hours in lymphatic massage for master estheticians is to allow esthetics schools to modernize their training curricula.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-11a-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 \$200 to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. The proposed amendments only apply to licensees and applicants for licensure as a master esthetician.

❖ OTHER PERSONS: As a result of the proposed amendments, licensed master estheticians will be able to practice more advanced skills and techniques on clients. Members of the public may be charged slightly more for some pedicure treatments. However, the Division is unable to determine if any licensed master estheticians may increase their prices for services. Schools that teach master esthetician programs may see a slight increase in costs to update their curriculum to meet the new training hour requirements. As a result of the proposed amendments, the schools would be able to take advantage of upgrades in training, new techniques and audio-visual training advances. The Division is unable to determine any exact cost to the schools as it could vary from school to school.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As a result of the proposed amendments, licensed master estheticians will be able to practice more advanced skills and techniques on clients. Members of the public may be charged slightly more for some pedicure treatments. However, the Division is unable to determine if any licensed master estheticians may increase their prices for services. Schools that teach master esthetician programs may see a slight increase in costs to update their curriculum to meet the new training hour requirements. As a result of the proposed amendments, the schools would be able to take advantage of upgrades in training, new techniques and audio-visual training advances. The Division is unable to determine any exact cost to the schools as it could vary from school to school.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule change regarding the use of more advanced pedicure and esthetics techniques could result in some additional costs to schools that train students on these techniques and to the public who

receives the more skilled services. It is difficult to estimate these costs. No additional 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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-11a. Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule[s].**

R156-11a-101. Title.

Th[ese] rule[s] are known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule[s]."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or th[ese] rule[s]:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(27)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, [or] implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing ~~other than nail clippers for cleaning, trimming, softening, smoothing and caring of the nail, cuticles, and calluses of the feet~~];

(b) ~~utilizing advanced equipment, instruments, implements, topical products, and preparations;~~ the use of blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Subsection R156-11a-611; or

(c) ~~manual, chemical or microdermabrasion for exfoliation as defined in Subsection R156-11a-610(4); or~~

~~—(d) lymphatic massaging of the lower portion of the feet or legs by manual or other means~~ utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

- (3) "BCA acid" means bicloroacetic acid.
- (4) "Body wraps", as used in Subsection 58-11a-102(27)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.
- (5) "Chemical exfoliation", as used in Subsection 58-11a-102(27)(a)(i)(C), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.
- (6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.
- (7) "Dermaplane" means the use of a scalpel or bladed instrument by a physician to shave the upper layers of the stratum corneum.
- (8) "Equivalent number of credit hours" means:
- (a) the following conversion table if on a semester basis:
 - (i) theory - 1 credit hour - 30 clock hours;
 - (ii) practice - 1 credit hour - 30 clock hours; and
 - (iii) clinical experience - 1 credit hour - 45 clock hours; and
 - (b) the following conversion table if on a quarter basis:
 - (i) theory - 1 credit hour - 20 clock hours;
 - (ii) practice - 1 credit hour - 20 clock hours; and
 - (iii) clinical experience - 1 credit hour - 30 clock hours.
- (9) "Exfoliation" means the sloughing off of non-living skin cells by very superficial and non-invasive means.
- (10) "Galvanic current" means a constant low-voltage direct current.
- (11) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or a physician assistant licensed under Title 58, Chapter 70, Physician Assistant Act.
- (12) "Hydrotherapy", as used in Subsection 58-11a-102(27)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.
- (13) "Indirect supervision" means the supervising instructor is present within the facility in which the person being supervised is providing services, and is available to provide immediate face to face communication with the person being supervised.
- (14) "Limited chemical exfoliation" means an extremely gentle chemical exfoliation.
- (15) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.
- (16) "Manual lymphatic massage", as used in Subsection 58-11a-102(25)(b), means a method using light pressure applied by manual or other means to the skin in specific maneuvers to promote drainage of the lymphatic fluid through the tissue.
- (17) "Microdermabrasion", as used in Subsection 58-11a-102(27)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.
- (18) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.
- (19) "Pedicure" means any of the following:
- (a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

- (b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;
 - (c) callus removal by sanding, buffing, or filing; or
 - (d) massaging of the feet or lower portion of the leg.
- (20) "Supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter in the treatment of a patient of the health care practitioner while:
- (a) the health care practitioner is physically located on the premises and is immediately available to care for the patient if complications arise; or
 - (b) the patient is physically located on the premises of the health care practitioner.
- (21) "TCA acid" means trichloroacetic acid.
- (22) "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(5), in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

Th[ese] rule[s-are] adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 11a.

R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.

In accordance with Subsection 58-11a-302(10)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for an esthetician program, the remaining 600 of which shall be in the following subject areas:

- (1) introduction consisting of:
 - (a) history of master esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) sterilization methods and procedures; and
 - (c) health risks to the master esthetician;
- (3) business and salon management consisting of:
 - (a) developing clients;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) advertising; and
 - (f) public relations;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) the human immune system;
- (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) contamination; and
 - (e) infection controls;
- (7) implements, tools and equipment for master esthetics;
- (8) first aid;
- (9) anatomy;
- (10) basic science of master esthetics;
- (11) analysis of the skin;
- (12) physiology of the skin;

- (13) advanced facials, manual and mechanical;
- (14) chemistry for master esthetics;
- (15) advanced chemical exfoliation, including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) reactions;
- (16) temporary removal of superfluous hair by waxing and advanced waxing;
- (17) 200 hours of instruction in lymphatic massage ~~[by manual or other means including]~~ **consisting of:**
 - (a) **40 hours of training in** anatomy and physiology of the lymphatic system ~~[to consist of 40 hours of training];~~
 - (b) **70 applications of one hour each in** manual lymphatic massage of the full body ~~[to consist of 40 hours of training]; and~~
 - (c) **90 hours of training in** lymphatic massage by other means ~~[including but not limited to, suction assisted massage or pressure assisted therapy equipment to consist of 60 applications of one hour each];~~
- (18) advanced pedicures;
- (19) advanced Aroma therapy;
- (20) the aging process and its damage to the skin;
- (21) medical devices;
- (22) cardio pulmonary resuscitation (CPR) training;
- (23) hydrotherapy;
- (24) advanced mechanical and electrical devices including instruction in using:
 - (a) sanding and microdermabrasion techniques;
 - (b) galvanic or high-frequency current for treatment of the skin;
 - (c) devices equipped with a brush to cleanse the skin;
 - (d) devices that apply a mixture of steam and ozone to the skin;
 - (e) devices that spray water and other liquids on the skin; and
 - (f) any other mechanical devices, esthetic preparations or procedures approved by the division in collaboration with the board for the care and treatment of the skin;
- (25) elective topics; and
- (26) Utah Master Esthetician Examination review.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

Date of Enactment or Last Substantive Amendment: [January 11, 2007]

Notice of Continuation: July 11, 2002

Authorizing, and Implemented or Interpreted Law: 58-11a-101; 58-1-106(1)(a); 58-1-202(1)(a)



Education, Administration
R277-473-9
 Standardized Testing Rules and
 Professional Development Requirement

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 29478
 FILED: 02/01/2007, 16:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for school districts to provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices. Training will change from semi-annually to annually.

SUMMARY OF THE RULE OR CHANGE: The amendment changes the time for school districts to provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices from annually to semi-annually.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-603(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings to state budget as a result of this rule amendment. The change makes the time line for professional development training on this topic less stringent for school districts.
- ❖ **LOCAL GOVERNMENTS:** There may be minimal savings to school districts as a result of this rule amendment because school districts are required to provide professional development training only once instead of twice a year.
- ❖ **OTHER PERSONS:** There are no anticipated costs or savings to other persons as a result of this rule amendment. There was never a cost for professional development training on this topic to teachers, administrators, and standardized test administrators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendment provides for less stringent guidance for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-473. Testing Procedures.

R277-473-9. Standardized Testing Rules and Professional Development Requirement.

A. It is the responsibility of all educators to take all reasonable steps to ensure that standardized tests reflect the ability, knowledge, aptitude, or basic skills of each individual student taking standardized tests.

B. School districts shall develop policies and procedures consistent with the law and Board rules for standardized test administration, make them available and provide training to all teachers and administrators.

C. ~~[At least twice a]~~Each school year, school districts shall provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices~~[-R686-103-6(I)].~~

D. All teachers and test administrators shall conduct test preparation, test administration, and the return of all protected test materials in strict accordance with the procedures and guidelines specified in test administration manuals, school district rules and policies, Board rules, and state application of federal requirements for funding.

E. Teachers, administrators, and school personnel shall not:

(1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item in any standardized test prior to test administration;

(2) copy, print, or make any facsimile of protected testing material prior to test administration without express permission of the specific test publisher, including USOE, and school district administration;

(3) change, alter, or amend any student answer sheet or any other standardized test materials at any time in such a way as to alter the student's intended response;

(4) use any prior form of any standardized test (including pilot test materials) that has not been released by the USOE in test preparation without express permission of the specific test publisher, including USOE, and school district administration;

(5) violate any specific test administration procedure or guideline specified in the test administration manual, or violate any state or school district standardized testing policy or procedure;

(6) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of standardized test scores of any individual student, class, or school;

F. Violation of any of these rules may subject licensed educators to possible disciplinary action under Rules of Professional Practices and Conduct for Utah Educators, R686-103-6(I).

KEY: educational testing

Date of Enactment or Last Substantive Amendment: ~~January 4, 2005~~ 2007

Notice of Continuation: May 9, 2005

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-603(3); 53A-1-401(3)



Education, Administration
R277-505
Administrative/Supervisory Certificates
and Programs

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE No.: 29477

FILED: 02/01/2007, 16:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a testing requirement and to emphasize a professional development requirement for administrators in Utah schools. The amendment also provides for mentoring and induction activities for new administrators, and brings the requirements into alignment with national administrative standards.

SUMMARY OF THE RULE OR CHANGE: The amendments provide for new and changed definitions, provide for updated language regarding administrative license areas of concentration positions and requirements and district-specific/charter school-specific administrator standards, provide a new section on reciprocity for administrative credentials, and remove outdated language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-6-101(1) and (2), and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated cost or savings to state budget. Universities could include the cost of an administrative exam for their students.

❖ **LOCAL GOVERNMENTS:** There may be minimal costs to school districts/charter schools as they implement professional development for administrators. Most school districts currently require professional development and will absorb the costs. School districts or charter schools may elect to cover the costs of an administrative exam for new administrators.

❖ **OTHER PERSONS:** The anticipated cost to new administrators beginning spring 2008 is \$75 as a registration fee for the administrative exam and approximately \$25 to take the exam. It is a one-time expense for new administrators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for new administrators beginning spring 2008 is \$75 as a registration fee for the administrative exam and approximately \$25 to take the exam. It is a one-time expense for new administrators.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-505. ~~Administrative~~~~[Supervisory Certificates]~~ License Areas of Concentration and Programs.

R277-505-1. Definitions.

~~[D]~~A. "Acceptable professional experience" means successful, full-time experience in public or accredited private or parochial schools in an area for which certification is required for employment in the public schools.

B. "~~[Basic-]~~~~Administrative~~~~[Supervisory Certificate]~~ license area of concentration" means the initial ~~[certificate]~~credential issued by the Board which permits the holder to be employed in a ~~[public school-]~~position which requires administration or supervision of ~~[kindergarten,]~~ elementary, middle, or secondary levels within the public education system.

~~[A]~~C. "Board" means the Utah State Board of Education.

D. "District-specific educator license with an administrative license area of concentration" means an area of concentration awarded by a school district or charter school to an administrator following verification of criteria consistent with this rule.

~~[F]~~E. "Internship" means an on-site supervised experience in an accredited public or private school or other approved location.

F. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

- (1) requirements established by law or rule;
- (2) three years of successful education experience within a five-year period in a Utah public or accredited private school; and
- (3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

G. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2

license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

H. "Outstanding professional qualifications" means a person who has completed a Bachelor's degree from an accredited institution of higher education and who has demonstrated successful managerial experience in business, government, or similar setting.

~~[C.~~ "Standard Administrative/Supervisory Certificate" means a certificate issued by the Board after a holder has demonstrated competence under the Basic Administrative/Supervisory Certificate.

~~—E]~~I. "USOE" means the Utah State Office of Education.

R277-505-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-6-101(1) and (2) which permit the Board to issue certificates for educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Administrative~~[Supervisory Certificates]~~ license areas of concentration, including meaningful internships; and

~~(2) specify the standards which shall be met by a teacher preparation institution in order to receive Board approval of its program for administrators and supervisors; (2) provide standards and procedures for district-specific and charter school-specific Administrative license areas of concentration.~~

R277-505-3. ~~[Positions — Requiring — an Administrative/Supervisory Certificate]~~ License Area of Concentration Positions.

~~[A. An individual shall hold either a Basic or a Standard Administrative/Supervisory Certificate if the individual supervises educators who hold Basic or Standard Certificates. The following positions require a person to hold an Administrative/Supervisory Certificate:~~

- ~~— (1) superintendent;~~
- ~~— (2) principal, all levels; and~~
- ~~— (3) assistant/associate/vice principal whose administrative duties utilize fifty percent or more of their school time.~~

~~B. Unless only non-certificated employees are supervised, the following district positions also require a person to hold an Administrative/Supervisory Certificate:~~

- ~~— (1) assistant superintendent;~~
- ~~— (2) administrative assistant;~~
- ~~— (3) director;~~
- ~~— (4) specialist;~~
- ~~— (5) subject matter supervisor; and~~
- ~~— (6) curriculum coordinator.~~

~~C. A principal of an elementary or middle school with fewer than six FTE teachers, including the principal, may perform duties appropriate to the position while holding a Basic or Standard Teaching Certificate.~~

~~D. Holders of administrative endorsements issued before the date of approval of this policy are not required to hold the new Administrative/Supervisory Certificate unless their assignment is changed to areas not covered by their current endorsement.]~~A. Local boards and charter schools shall determine, consistent with Sections 53A-3-301(4), 53A-6-104.5, 53A-6-110, and this rule,

required licenses or letters of authorization for administrators working in various positions and settings.

B. Local boards and charter schools shall, by board policy determined in an open meeting, notify the public of required licenses or credentials for administrators in their schools.

C. Local boards and charter schools that have designated appropriate administrative requirements consistent with the law and this rule shall receive professional staff costs only for administrators licensed consistent with the policies and this rule.

~~E~~D. Administrative ~~or supervisory~~ interns currently registered for academic credit in an institution of higher education for the internship are not required to hold an Administrative/~~Supervisory~~ ~~Certificate~~ license area of concentration but shall ~~be issued an Intern Certificate by the respective institution in accordance with Board standards~~ hold a Level 2 or Level 3 license.

E. The Board strongly recommends that all educators who supervise educators complete Administrative license areas of concentration programs and participate in ongoing professional development.

R277-505-4. ~~Certification~~ Administrative License Area of Concentration Requirements.

A. An applicant for the ~~Basic~~ Administrative/~~Supervisory Certificate~~ license area of concentration shall have ~~done~~ successfully completed or received all of the following:

(1) ~~hold a teaching, special education, school counselor, school psychologist, or school social worker certificate~~ a Level 2 teaching license or equivalent from another state with area of concentration;

(2) ~~complete at least a fifth year of training in a Board approved administrative supervisory certification program, including a master's degree in administration or supervision or a related area~~ a master's degree or more advanced degree;

(3) an education administrative program; and

(4) a Board-approved administrative test;

(5) Exceptions may be made to R277-505-4A(1)(2) or (3) by the USOE for exceptional professional experience, exceptional education accomplishments, or other noteworthy experiences or circumstances.

~~(3)~~6 ~~complete~~ not fewer than ~~two~~ three years of acceptable full-time professional experience in an education-related area in a public or accredited private or parochial school. Appropriate experiences that may be substituted for up to one-half of this requirement include:

(a) alternative school ~~and~~ or similar type professional experience;

(b) community college, trade-technical college, ~~and~~ or other post-secondary professional experience;

~~(c)~~ district-level administrative experience;

~~(e)~~d headstart ~~and~~ or preschool professional experience;

~~(d)~~e college of education or state education agency professional experience; ~~and~~ or

~~(e)~~f professional experience in academic departments of colleges or universities if there has been sufficient involvement with public school programs and curriculum.

(4)7 ~~be recommended by an institution whose program of preparation has been approved by the Board~~ a recommendation from a Utah institution whose program of preparation has been accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC), or

one of the major regional accrediting associations as defined under R277-503-1L.

B. In addition to ~~Subsection A~~ R277-505-4A, above, an applicant for the ~~Basic~~ Administrative/~~Supervisory Certificate~~ Administrative license area of concentration shall successfully complete an administrative internship. The internship shall ~~satisfy the following criteria~~:

(1) ~~The internship shall~~ consist of a minimum of 450 hours of supervised clinical experiences~~:-~~

~~(2) A~~, excluding additional hours required by a university for seminars or discussion sessions ~~shall not be included~~ within the required 450 hours.

~~(3)~~2 include ~~A~~ a minimum of 2~~25~~00 of the required 450 hours ~~shall take place~~ in a school setting which offers the opportunity of working with a properly ~~certificated~~ licensed principal, students, faculty, classified employees, parents and patrons.

~~(4)~~3 include ~~F~~ the remainder of the required internship hours ~~may include experience~~ in school district offices, the USOE or other USOE-approved and appropriate agencies or school settings.

~~(5)~~4 include ~~F~~ the majority of the school-level supervised experience ~~shall take place~~ during the regular school day in concentrated blocks of a minimum of three hours each when students are present.

~~(6)~~5 presume ~~F~~ interns' involvement in extracurricular activities ~~is expected~~.

~~(7)~~6 ~~Internships shall~~ include experiences at both elementary and secondary school levels.

~~(8)~~7 ~~Interns shall~~ have clinical experience in a different school than where the intern ~~is~~ may be employed as a teacher.

(8) provide opportunities for the intern to demonstrate application of knowledge and skills gained through the higher education experience in school settings, including the opportunity to:

(a) understand the school community;

(b) understand the school culture and its importance to the student;

(c) experience managing a safe, efficient learning environment;

(d) collaborate with families of diverse students;

(e) support ethics and fairness in the school setting; and

(f) participate in the larger political, social, economic, legal and cultural school context.

~~C. The holder of a Basic Administrative/Supervisory Certificate who does not have the opportunity to function in an administrative or supervisory position may, upon request, have the Basic Certificate renewed once for an additional three-year period. Subsequent renewals will require evidence of continued professional growth, e.g., college course work or professional experience related to administration or supervision. If a recommendation for Standard Certification is not received after three years of administrative or supervisory experience, the Basic Certificate may not be renewed.~~

~~D~~C. In the first year of employment as an administrator, ~~A~~ an applicant for the ~~Standard~~ Administrative/~~Supervisory Certificate~~ license area of concentration shall ~~have done all of the following~~ complete a one school year mentoring experience established and supervised by the employing school district or charter school that includes criteria identified in R277-522-3A and B, as applied to administrators.

~~(1) complete three years of successful, acceptable, professional experience in school administration or supervision under a Basic Administrative/Supervisory Certificate or its equivalent;~~

~~_____ (2) be recommended by the employing school district with input from a teacher education institution.~~

~~] _____ D. Relicensure and professional development requirements for active and non-practicing administrators shall include:~~

~~_____ (1) for active administrators, at least 75 of the required 200 points shall focus on leadership issues to ensure that:~~

~~_____ (a) administrators have current and effective knowledge and skills;~~

~~_____ (b) administrators understand and can demonstrate employee corrective action directives;~~

~~_____ (c) administrators are working to improve student achievement, teacher effectiveness and teacher retention skills; and~~

~~_____ (d) administrators are using student data to assess student learning.~~

~~_____ (2) for non-practicing administrators, at least 100 points of the required 200 points shall be related to school administration.]~~

~~_____ E. Districts may employ administrators on a limited basis subject to the provisions of R277-511, Eminence and Special Qualification Authorization or R277-512, Letters of Authorization.]~~

R277-505-5. [Standards for the Approval of Programs for the Preparation of Administrators/Supervisors] District-Specific and Charter School-Specific Administrator Standards.

~~[The administrator/supervisor preparation program of an institution may be approved if it meets the standards prescribed in the Standards for State Approval of Teacher Education for Supervisory and Administrative Specialization.] A. A local school board may request a district-specific educator license and Administrative license area of concentration permitting a person with outstanding professional qualifications to serve in a position for which that license or area of concentration is required, including all areas listed in R277-503B(1)-(6) and R277-505-4.~~

~~_____ B. In order to receive an educator license in a district-specific Administrative license area of concentration, a district shall make a request using a USOE-approved form.~~

~~_____ C. The candidate shall:~~

~~_____ (1) hold a Bachelors degree from an accredited institution of higher education.~~

~~_____ (2) have a record of documented, demonstrated success in a managerial role.~~

~~_____ (3) take a USOE-approved school leadership test which shall be used to inform and guide continuing professional development; and~~

~~_____ (4) complete a one-year supervised administrative experience under the supervision of a licensed and trained administrative mentor assigned by the employing school district or charter school. The candidate shall be issued a letter of authorization by the USOE during the year of supervision.~~

~~_____ D. At the end of the supervised year, the employing district or charter school shall request that a district or charter school-specific Administrative license area of concentration be awarded by the USOE.~~

~~_____ E. The district-specific Administrative license area of concentration shall be valid only in the employing district/charter school for the duration of the individual's employment.~~

~~_____ F. The completed Administrative license area of concentration shall qualify the school district or charter school to receive professional staff costs.~~

~~_____ G. The USOE may receive and investigate, or both, complaints about district-specific or charter school-specific administrators. Investigations shall be conducted by the Utah Professional Practices~~

Advisory Commission and action may be taken consistent with Section 53A-6-405, Denial of license, and Section 53A-6-501, Disciplinary action against educator.

H. Individuals who receive district-specific or charter school-specific administrative license areas of concentration shall be subject to professional development requirements established by local boards or charter schools.

R277-505-6. Reciprocity for Administrative Credentials.

A. An applicant for a Utah administrative area of concentration shall submit documentation of successful completion of an administrative program that meets Utah administrative requirements of R277-505-4.

B. The requirements of R277-505-4 may be satisfied, at the discretion of the USOE, by administrative experience in another state.

C. The USOE may require out-of-state applicants to pass a state-approved administrative test, if such a test is required of in-state applicants.

KEY: professional competency, teacher certification, accreditation

Date of Enactment or Last Substantive Amendment: [1993]2007

Notice of Continuation: September 12, 2002

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-101(1); 53A-6-101(2); 53A-1-401(3)



Education, Administration
R277-517
Athletic Coaching Certification

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE No.: 29479

FILED: 02/01/2007, 16:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to require all public education coaches to be trained in order to be able to coach in their respective areas. Additionally, a second certification organization has been approved and added to the rule.

SUMMARY OF THE RULE OR CHANGE: The amendment provides new and changed definitions, adds a second approved certifying organization, and provides minimal terminology changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to state budget. Either Utah High School Activities Association will provide training at its own expense or school districts and charter schools will make arrangements for training independently with approved certifying organizations.

❖ LOCAL GOVERNMENTS: There may be nominal costs to school districts or charter schools to provide training if they choose to do so independent from the Utah High School Activities Association.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. School districts or charter schools will have the responsibility to make certain that all coaches are appropriately certified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. School districts or charter schools will have the responsibility to make certain that all coaches are appropriately certified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-517. Athletic Coaching Certification.

R277-517-1. Definitions.

A. "American Sport Education Program (ASEP)" offers training programs for coaches, officials, sport administrators, athletes and parents of athletes.

B. "Athletic coach" means any paid individual whose responsibilities include coaching or advising an athletic team, including both men's and women's baseball, basketball, ~~cheerleading,~~ cross-country/track, ~~drill team,~~ football, golf, soccer, softball, swimming and diving, tennis, volleyball, and wrestling.

C. "Athletic coaching training" means the training required of head coaches and paid assistant coaches of all sports. The training requires completion of a Board-approved in-service program covering the basic competencies outlined in R277-517-4, Athletic Coaching Preparation Criteria. A basic first aid course and CPR training shall be in addition to the required ~~eight hours of~~ training.

D. "Board" means the Utah State Board of Education.

E. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such information as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

F. "NFHS" means the National Federation of State High School Associations.

G. "NFHS Coaches Education Program" offers professional ethics, physical conditioning, interpersonal skills and sports safety training programs for coaches, officials, sport administrators, athletes and parents of athletes.

[F]H. "Paid" means receiving any compensation, remuneration, or gift to which monetary value can be attached as a result of service as a coach.

I. "School Coaches Official Registry (SCORE)" means a statewide database containing information about Utah coaches' training and qualifications.

[G]J. "Standards" means criteria that are applied uniformly and which shall be observed in the operation of a program. They are criteria against which the goals, objectives, and operation of a program will be evaluated. Following standards is a mandatory action.

[H]K. "USOE" means the Utah State Office of Education.

[I]L. "Utah High School Activities Association" means an Association of Utah school districts that includes representation from the Board and USOE that administers and supervises interscholastic activities among its member schools according to the Association constitution and by-laws.

R277-517-4. Compliance - SCORE Program.

A. Schools or school districts shall verify compliance with this rule by:

(1) reporting to the Utah High School Activities Association and the Board, utilizing the SCORE database, the following information:

- (a) the names of Utah public school athletic coaches participating with public school students; and
- (b) the school and specific assignment of the school athletic coach; and
- (c) whether or not the school athletic coach is a licensed educator; and
- (d) documentation of the training received by the coaches identified in R277-517-1B; and
- (e) documentation of the completion of a criminal background check required under Section 53A-3-410, including resolution of any relevant problems.

B. Documentation of the qualification and preparation of coaches shall be provided in the activity disclosure statement required under Section 53A-3-420 no later than two weeks after the completion of tryouts for a specific sport and shall be public information.

C. School districts, as supervisors and employers of coaches, are responsible to ensure that their coaches' behavior and activities are consistent with state law and district policies.

D. Athletic coaches whose records are on CACTUS and whose CACTUS records do not identify unresolved allegations as of January 1, 2003, shall not be required to complete a criminal background check.

R277-517-5. Athletic Coaching Training Program Criteria.

A. The USOE shall review and compare the National Standards for Athletic Coaches, Levels 1-3, with the American Sport Education Program (ASEP), the NFHS Coaches Education Program and other equivalent programs to develop and determine a Utah coaching preparation program. [~~Currently, the Board approves ASEP for Utah coaching preparation training.~~]

B. The National Standards for Athletic Coaches and the ASEP training program and NFHS Coaches Education Program are available from the USOE and the Utah High School Activities Association.

C. A [~~USOE~~]Board-approved coaching preparation program shall include, at a minimum, knowledge and understanding in all of the following areas:

- (1) the prevention and care of athletic injuries;
- (2) bio-physiology including nutrition, drugs, biomechanics and conditioning;
- (3) emergency life support skills, to include advanced first aid and CPR;
- (4) pedagogy of coaching including skill analysis, learning theories and progressions;
- (5) psycho-social aspects of sports, competition, and coaching including the psychology of performance, role modeling, leadership, sportsmanship, competition, human relationships, and public relations;
- (6) motor learning including adolescent growth and development, physical, social, and emotional stress and limitations, external social and emotional pressures; and
- (~~7~~) sports management and philosophy including sports law, risk management and team management.

[~~(7)~~]D. School districts may add training about officiating at athletic events, training about local district rules and regulations, [~~High School Activities Association by laws and interpretations of rules,~~] and information about legal issues in sports and school activities [~~; and~~].

KEY: coaching certification, athletics

Date of Enactment or Last Substantive Amendment: [~~February 5, 2004~~]2007

Notice of Continuation: May 1, 2006

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(a); 53A-6-101 through 109



Environmental Quality, Environmental
Response and Remediation
R311-600
Hazardous Substances Mitigation Act:
Enforceable Written Assurances

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 29460

FILED: 01/31/2007, 09:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to describe the principles and procedures the Executive Director of the Department will use in responding to requests for enforceable written assurances under the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

SUMMARY OF THE RULE OR CHANGE: The new rule describes the principles and procedures the Department intends to follow in administering requests for enforceable written assurances.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-326

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because the department will charge a fee to cover its costs in reviewing an application for an enforceable written assurance.
- ❖ LOCAL GOVERNMENTS: The rule imposes no requirements on local government so a cost or savings to local government is not anticipated.
- ❖ OTHER PERSONS: A processing fee of \$500 will be charged for each application. As the agency has no way of determining how many applications will be received, the exact cost in the aggregate cannot be provided.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A fee will be charged to process the application in accordance with the Fee Schedule. The current fee is \$500.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses is expected to be positive because the rules will provide businesses with criteria to apply in determining whether and how to seek an enforceable assurance. Dianne R. Nielson, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sandra K. Allen at the above address, by phone at 801-536-4122, by FAX at 801-359-8853, or by Internet E-mail at SKALLEN@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 03/19/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/12/2007 at 9:00 AM, Department of Environmental Quality, Building 2, Airport East Business Complex, Room 101, 168 N 1950 W, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-600. Hazardous Substance Mitigation Act: Enforceable Written Assurances.

R311-600-1. Purpose, Authority, Scope, and Requirements.

(a) The purpose of these rules is to describe the principles and procedures the Executive Director of the Utah Department of Environmental Quality will use in responding to requests for enforceable written assurances.

(b) The authority for issuing these rules is found in the Hazardous Substance Mitigation Act which was amended in 2005 to expressly allow the Executive Director to issue enforceable written assurances to bona fide prospective purchasers, contiguous property owners, and innocent landowners, terms defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act and incorporated in the Hazardous Substance Mitigation Act. The Department will not bring an enforcement action under the Hazardous Substance Mitigation Act against the holder of an enforceable written assurance, provided the holder continues to satisfy the ongoing obligations associated with the written assurance. In addition, the assurance grants the holder protection from any state law cost recovery and contribution actions under the Hazardous Substance Mitigation Act. The Executive Director's refusal to issue an enforceable written assurance is not indicative of the environmental status of the property, the applicant's responsibility or liability, or the Department's enforcement interest in a particular property or person.

(c) These rules apply to enforceable written assurances. In many situations, other types of letters or agreements may be more appropriate or desirable. In passing these rules, the Executive Director does not intend to limit the authority to compromise and settle claims, to enter voluntary cleanup agreements, to enter prospective purchaser agreements, to enter apportionment determinations or to issue other types of letters. Writings that do not indicate they are enforceable written assurances are not covered by these rules.

(d) The requirements for enforceable written assurances are found in these rules and in the Hazardous Substance Mitigation Act, Title 19 Chapter 6 Part 3.

(e) When the Division of Environmental Response and Remediation is referenced in the Enforceable Written Assurances rules, the Division of Environmental Response and Remediation is the designee of the Executive Director for the purpose stated or implied.

R311-600-2. Definitions.

(a) The terms used in this rule are defined in section 19-6-302.

(b) For the purposes of the Enforceable Written Assurances rules:

(1) "Applicant" means a person who has applied to receive an enforceable written assurance based upon his status as a bona fide prospective purchaser, contiguous property owner or innocent landowner.

(2) "Characterization" means an investigation to demonstrate contaminants at the site do not pose a risk to human health and the environment. Characterization may include sampling, testing, monitoring, and the collecting of sufficient information to demonstrate compliance with the principles in R311-600-3.

(3) "Contaminants" mean hazardous substances or hazardous materials.

(4) "Department" means the Department of Environmental Quality.

(5) "Enforceable Written Assurance" means a letter issued by the Executive Director to an applicant pursuant to section 19-6-326 acknowledging the applicant's status as a bona fide prospective purchaser, contiguous property owner or innocent landowner based upon the representations of the applicant that it meets and will continue to meet the criteria.

(6) "Environmental Covenant" means a servitude defined in section 57-25-102(4).

(7) "EPA" means the United States Environmental Protection Agency.

(8) "Executive Director" means the Executive Director of the Department of Environmental Quality or a designee.

(9) "Holder" means a person who has received an enforceable written assurance.

(10) "Institutional Control" means the term defined in section 19-10-102(1).

(11) "Property" means the property described in the legal description by the applicant in the enforceable written assurance application.

(12) "Site" means the area, including soil, water or groundwater, where a release of hazardous substances or hazardous materials has come to be located irrespective of property boundaries.

(13) "Utility Corridor" means easements, permits, rights of access, or right by virtue of franchise agreements held by utility companies for the purpose of providing water, electricity, natural gas, sewer, and other services to properties.

(14) "VCP" or "Voluntary Cleanup Program" means the program established under section 19-8-101 et seq.

R311-600-3. Enforceable Assurance Evaluation Principles.

(a) The issuance of an enforceable written assurance is discretionary and requires a case by case evaluation. The Department views that compliance with the conditions of the exemptions for a bona fide prospective purchaser, contiguous property owner, or innocent landowner (e.g., all appropriate inquiries, notice, care/reasonable steps, cooperation, and compliance with institutional controls) will generally ensure there is no unacceptable risk to human health or the environment. However, even if an applicant meets the definition of a bona fide prospective purchaser, a contiguous property owner, or an innocent landowner as defined in section 19-6-302, before issuing an enforceable written assurance, the Executive Director shall evaluate whether the applicant has demonstrated the following:

(1) After all appropriate inquiries, there is no indication of a release, a threatened release, or the possibility of a release at the property, or;

(2) If there is a threatened release or the possibility of a release at the property, there has been sufficient characterization to demonstrate that there is no reason to take action, or;

(3) If there has been a release, the release has been or is being cleaned up with oversight provided by the Department and the applicant is sufficiently informed to take reasonable steps to avoid exposing the contamination to the public, avoid contributing to or exacerbating the contamination, and to avoid interfering with or substantially increasing the costs of response actions, or;

(4) If the release has not been and is not being cleaned up, there has been sufficient characterization to demonstrate that the release is not ongoing, there are no uninterrupted exposure pathways, and the applicant is sufficiently informed to take reasonable steps to avoid exposing the contamination to the public, avoid contributing to or exacerbating the contamination, and to avoid interfering with or substantially increasing the costs of response actions, or; there has been sufficient characterization to demonstrate that there is no reason to take action.

(b) If the criteria in subsection (a) are satisfied and if the applicant qualifies as a bona fide prospective purchaser under federal law and is not a liable person under the Utah Hazardous Substance Mitigation Act, the Executive Director may issue an enforceable written assurance to the applicant.

(c) If the criteria in subsection (a) are not satisfied, the Executive Director may issue an enforceable written assurance to the applicant that provides that an ongoing reasonable step is to complete additional characterization and response actions through the VCP to satisfy the criteria in subsection (a) above. The failure of the applicant to complete additional characterization and response actions through the VCP may result in a revocation or nullification of the enforceable written assurance.

(d) If the criteria in subsection (a) are not satisfied because reports provided by the applicant indicate a potential environmental problem, but subsequent information easily and quickly supports a conclusion that the potential for unacceptable risk is highly unlikely and also provides an understanding of reasonable steps, the Executive Director may issue an enforceable written assurance.

(e) The Executive Director may issue certain, general, non-specific comfort letters describing the liability provisions of the Hazardous Substance Mitigation Act. A person may request this type of letter without applying for an enforceable written assurance and without the submission of a fee or may request this type of letter anytime during the enforceable assurance review process.

R311-600-4. Application.

(a) An applicant shall submit to the Division of Environmental Response and Remediation an application as prescribed by this section.

(b) An application submitted under this section shall:

(1) Be on a form provided by the Division of Environmental Response and Remediation;

(2) Contain:

(A) General information concerning the applicant and its affiliates, and current and past owners, and operators of the site;

(B) The address, property tax identification number, and legal description of the property;

(C) A statement and information that demonstrates that the applicant has not caused or contributed to the contamination on the property or the site, and is otherwise eligible for an enforceable written assurance;

(D) A statement indicating and information demonstrating that the applicant is applying as a bona fide prospective purchaser, a contiguous property owner, or an innocent landowner, and a certification that the applicant meets and will continue to meet the requirements;

(E) The current and proposed future land use;

(F) Information indicating the involvement, if any, that the Department or the EPA has had with the property or the applicant;

(G) The fee required in the fee schedule approved by the legislature;

(H) A site eligibility report.

(c) The site eligibility report shall include the following:

(1) Results of the applicant's All Appropriate Inquiries, including a detailed discussion of each specific activity required by Standards and Practices for Conducting "All Appropriate Inquiries" under the Comprehensive Environmental Response, Compensation, and Liability Act, 70 Fed. Reg. 66070 (11/1/05) codified at 40 C.F.R. 312.

(2) Sufficient information demonstrating compliance with the principles in R311-600-3, including information identifying whether the release is on-going or likely to be on-going.

(3) Laboratory analytical results from environmental media sampled at the site.

(4) Proposed reasonable steps to mitigate potential risk to human health and the environment based on present and future intended land use, including utility corridors.

(5) Description of activity and use limitations or engineering controls, and how the limitations or controls will be enforced over time.

R311-600-5. Review of Documents.

(a) The Executive Director may accept and review the application and site eligibility report. If the Executive Director accepts the application and site eligibility report, the Executive Director may notify the applicant of additional information required to issue an enforceable written assurance.

(b) If at any point the Executive Director determines that additional, substantial characterization is required, the Executive Director may deny the issuance of an enforceable written assurance.

R311-600-6. Withdrawal of Application.

The applicant may withdraw the application by giving written notice to the Executive Director. The withdrawal is effective on the date the Executive Director receives the notice. The fee will not be refunded.

R311-600-7. Enforceable Written Assurance.

(a) The enforceable written assurance shall state that it is issued pursuant to section 19-6-326.

(b) The enforceable written assurance may clarify what the applicant must do (or not do) to retain the assurance in effect.

(c) The enforceable written assurance is contingent upon the applicant's compliance with ongoing requirements imposed herein and in section 19-6-302 on a bona fide prospective purchaser, contiguous property owner, and innocent landowner.

R311-600-8. Rejection of Application.

(a) The Executive Director may choose not to review and application.

(b) Applications that are not reviewed are considered rejected.

(c) The Executive Director has sole discretion to reject an application for any reason.

(d) If an application is rejected, the Executive Director shall promptly notify the applicant.

(e) Rejection of an application is not indicative of the environmental status of the property, applicant's responsibility or liability, or the Department's enforcement interest in the applicant.

R311-600-9. Denial of Application.

(a) The Executive Director may reject or deny the issuance of an enforceable written assurance for any reason.

(b) The Executive Director will deny or reject the issuance of an enforceable written assurance for the following reasons:

(1) If the application is not complete, or;

(2) The applicant does not provide sufficient evidence for the Executive Director to acknowledge that:

(A) The applicant has demonstrated compliance with the Enforceable Assurance Evaluation Principles in R311-600-3, or;

(B) The applicant is a bona fide prospective purchaser, an innocent landowner, or a contiguous property owner based upon the applicant's representations, or;

(3) If information obtained subsequent to filing demonstrates that:

(A) The applicant has not demonstrated compliance with the Enforceable Assurance Evaluation Principles in R311-600-3, or;

(B) That the applicant is not a bona fide prospective purchaser, an innocent landowner, or a contiguous property owner, or;

(4) The applicant does not:

(A) Demonstrate the ability and willingness to exercise appropriate care with respect to the contamination at the facility, including taking reasonable steps to:

(i) Stop any continuing release;

(ii) Prevent any threatened future release; and

(iii) Prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance or hazardous material or;

(B) Grant and ensure reasonable access, or;

(C) Demonstrate willingness to:

(i) Comply with any land use restrictions established or relied on in connection with the response action, and;

(ii) Not impede the effectiveness of integrity of any institutional control or environmental covenant employed in connection with a response action, and;

(iii) Record at the request of the Executive Director an Environmental Covenant for any land use restrictions established or relied on in connection with the response action.

R311-600-10. Revocation of Assurance.

(a) The enforceable written assurance shall remain valid unless revoked.

(b) The Executive Director may revoke the enforceable written assurance for good cause, including the following:

(1) The holder:

(A) Acquired the enforceable written assurance by fraud, misrepresentation, or failure to disclose material information;

(B) Does not exercise appropriate care with respect to contaminants found at the facility by taking reasonable steps to:

(i) Stop any continuing release;

(ii) Prevent any threatened future release, and;

(iii) Prevent or limit human, environmental, or natural resource exposure to any previously released contaminants;

(C) Does not comply with any land use restrictions or institutional controls established or relied on in connection with the response action, or; impedes the effectiveness or integrity of any institutional control, or environmental covenant employed in connection with a response action, or; does not record an Environmental Covenant for any land use restrictions established or relied on in connection with the response action if requested to do so by the Executive Director;

(D) Does not cooperate with persons providing remedial or investigative action;

(E) Does not pay the required fees within a reasonable time;

(F) Does not provide and ensure reasonable access as requested by the Executive Director;

(G) Does not provide legally required notices with respect to the discovery or release of any contaminants at the facility, or;

(2) New information demonstrates that the holder may not be a bona fide prospective purchaser, innocent landowner, or contiguous property owner.

(c) The holder shall have the burden of proving by a preponderance of evidence that at the time the enforceable assurance was granted and thereafter, the holder satisfied criteria for being considered a bona fide prospective purchaser, an innocent landowner, or a contiguous property owner.

(d) The procedures followed to revoke an enforceable written assurance shall comply with the Administrative Procedures Act and shall include written notice to the holder and an opportunity to contest the Department's notice.

(e) An administrative action to revoke the enforceable written assurance may be issued concurrently with an order to abate under section 19-6-310 of the Hazardous Substance Mitigation Act.

R311-600-11. Access.

The applicant and holder shall ensure reasonable access to the site to persons that are authorized to conduct response actions or natural resource restoration at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the property.

R311-600-12. Institutional Controls.

The applicant and holder shall comply with any existing land use restriction established or relied on in connection with the response action, any existing institutional control created under section 19-10-101 to -108 or any environmental covenant created under section 57-25-101 to -114, and shall implement and record an environmental covenant as requested by the Executive Director.

R311-600-13. Funding.

(a) The applicant shall pay the required fees in accordance with the legislatively approved fee schedule. The initial fee shall be remitted with the application. If the fee schedule allows imposition of additional fees based upon additional expenses and costs incurred by the Department, the applicant shall pay the fees within the time requested by the Department.

(b) The fees are not refundable unless the application is rejected without review.

R311-600-14. Transfer of Property after Issuance of Enforceable Written Assurance.

The enforceable written assurance is not transferable to another party but shall survive any conveyance or other disposition of the

property identified in the enforceable written assurance as to the holder.

R311-600-15. Notice.

In providing notice to applicants and holders, the Executive Director may rely upon the address provided by the applicant in the application or upon subsequent written changes of address filed with the Division of Environmental Response and Remediation by the applicant or holder. A change of address filed by the applicant or holder shall indicate the name and new address of the applicant or holder, and shall also include the property address, legal description, property tax identification number, the date the assurance was issued, and the date the application was filed.

R311-600-16. Orders Issued Under Section 19-6-309.

Issuance of an enforceable written assurance shall not preclude the issuance of an order under section 19-6-309 of the Hazardous Substance Mitigation Act because ongoing obligations of a bona fide prospective purchaser require taking reasonable steps to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to earlier releases.

R311-600-17. Apportionment Policy.

In an apportionment proceeding conducted by the Executive Director, the Executive Director intends to apportion zero liability to a party who proves that he has satisfied the obligations, including the continuing obligations, of a bona fide prospective purchaser, contiguous property owner, or innocent landowner, and has satisfied the enforceable assurance evaluation principles in R311-600-3 regardless of whether the party has previously obtained an enforceable written assurance.

R311-600-18. Utility Company Enforcement Policy.

(a) The Department does not intend to bring enforcement or cost recovery action against, and will not hold liable, a utility company under the Hazardous Substance Mitigation Act based solely upon the utility company's interest in a utility corridor for the purpose of supplying utility services.

(b) The Department's policy is subject to the following conditions:

(1) The utility company did not cause or contribute to the release and does not take actions that exacerbate the release.

(2) The utility company complies with applicable regulations, land use restrictions, institutional controls, environmental covenants, and site management plans under the VCP in handling contaminated media.

(3) The utility company takes reasonable steps to prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances or hazardous materials.

R311-600-19. Relationship to Voluntary Cleanup Program.

Upon the request of the applicant, the Executive Director may condition the issuance of an enforceable written assurance upon completion of additional work through the Department's VCP. A conditional enforceable assurance is not a substitute for completion of work under the VCP. The Executive Director reserves the discretion to withdraw or revoke the conditional enforceable assurance at any time if the applicant is unable to prove that the conditions have been satisfied. The Executive Director reserves the discretion to issue an amended enforceable assurance that eliminates

the requirement for additional work through the Department's VCP at such time as the Executive Director has adequate information and documentation to determine that the additional work is no longer necessary.

R311-600-20. Long Term Tenants.

Long Term tenants shall be treated as the equivalent of an owner or operator for the purpose of these rules.

R311-600-21. Innocent Landowners.

(a) An applicant who seeks or obtains an enforceable assurance as an innocent landowner shall:

(1) Take reasonable steps to:

(A) Stop any continuing release;

(B) Prevent any threatened future release; and

(C) Prevent or limit human, environmental, or natural resource exposure to any hazardous substance or hazardous material released on or from the property owned by the applicant.

(2) Provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the property from which there has been a release or threatened release.

(3) Comply with any land use restrictions established or relied on in connection with the response action at the facility and cooperate to establish such restrictions and not impede the effectiveness or integrity of any institutional control or environmental covenant employed in connection with a response action.

(b) An applicant who seeks or obtains an enforceable assurance as an innocent landowner and fails to satisfy the above condition shall not be eligible to receive or retain an enforceable written assurance.

KEY: bona fide prospective purchaser

Date of Enactment or Last Substantive Amendment: 2007
Authorizing, and Implemented or Interpreted law: 19-6-326



Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-308

Application, Eligibility Determinations
and Improper Medical Assistance

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29469

FILED: 01/31/2007, 16:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to clarify how the agency determines the application date for medical assistance. It also clarifies the due date for verifications, recertifications, change reports, or other information the agency requests from Medicaid clients.

SUMMARY OF THE RULE OR CHANGE: This rule clarifies application date criteria that determine client eligibility. It also clarifies eligibility verification and information exchange requirements, agency responsibilities regarding eligibility decisions, eligibility period and recertification requirements, change reporting requirements, case closure and redetermination requirements, and client rights and responsibilities regarding improper medical coverage.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 435.911 and 435.912, 2006 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There may be a minimal savings in state and federal dollars because some Medicaid clients may lose between one and three days of retroactive coverage. The Department has no data to indicate how many Medicaid clients may not meet the new deadlines, but believes that it will be very small because the Medicaid clients will adhere to the slightly changed deadlines rather than lose medical coverage.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not determine Medicaid eligibility and are not affected by the deadlines.

❖ **OTHER PERSONS:** There may be a cost to Medicaid clients who may lose between one and three days of retroactive coverage. The Department has no data to indicate how many Medicaid clients may not meet the new deadlines, but believes that it will be very small because the Medicaid clients will adhere to the slightly changed deadlines rather than lose medical coverage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may a cost to a single Medicaid client who loses retroactive coverage. There is insufficient data to quantify any dollar amount, but a Medicaid client who loses coverage will be able to reapply at any time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Eligibility for services and deadlines need to be explicit and clear to protect both the taxpayer and the applicant. These rules should not have a negative fiscal impact on business, as it is hoped that Medicaid applicants will comply with the rules. David N. Sundwall, MD, 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:

Craig Devashrayee or Gayle M. Six at the above address, by phone at 801-538-6641 or 801-538-6895, by FAX at 801-538-6099 or 801-538-6952, or by Internet E-mail at cdevashrayee@utah.gov or gaylesix@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-308. Application, Eligibility Determinations and Improper Medical Assistance.

R414-308-1. Authority and Purpose.

(1) This rule is authorized by 26-18-3.

(2) This rule establishes requirements for medical assistance applications, eligibility decisions, eligibility period, verifications, change reporting, ~~[case records,]~~ notification and improper medical assistance for the following programs:

- (a) Medicaid;
- (b) Qualified Medicare Beneficiaries;
- (c) Specified Low-Income Medicare Beneficiaries; and
- (d) Qualified Individuals.

R414-308-3. Application and Signature.

(1) An individual may apply for medical assistance by completing and signing any Department-approved application form for Medicaid, Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, or Qualified Individuals assistance and delivering it to the agency. If available, an individual may complete an on-line application for medical assistance and send it electronically to the agency.

(a) If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) For on-line applications, the individual must either send the agency an original signature on a printed signature page, or if available on-line, submit an electronic signature that conforms with state law for electronic signatures.

(c) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative.

(d) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement.

(e) An authorized representative may apply for the individual if unusual circumstances or death prevent an individual from applying on his own. The individual must sign the application form if possible. If the individual cannot sign the application, the representative must sign

the application. The agency may assign someone to act as the authorized representative when the individual requires help to apply and is unable to appoint a representative.

(2) The date of application ~~[will be decided]~~ is determined as follows:

(a) The application date is the date the agency receives a completed, signed application at a local office by 5:00 p.m. on a business day. ~~[is the application date when the application is delivered to a local office.]~~ This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the Internet.

(b) ~~[The date postmarked on the envelope is the application date if a completed, signed application is mailed to the agency.]~~ If a local office receives an application after 5:00 p.m. of a business day, the date of application is the next business day.

(c) The application date for applications delivered to an outreach location is as follows:

(i) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(ii) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from that location.

(d) The due date for verifications needed to complete an application and determine eligibility is 5:00 p.m. on the last day of the application period.

~~[(e)3] [The date the agency receives the completed, signed application via facsimile transfer is the application day.]~~ The agency accepts ~~[the]~~ a signed application sent via facsimile as a valid application and does not require it to be signed again.

~~[(3)4]~~ If an applicant submits an unsigned, completed application form to the agency, the agency will notify the applicant that he or she must sign the application [must be signed] within 30 days of the application date. The agency will send a signature page to the applicant within 10 days for the client to sign and return.

(a) If the agency receives a signature page signed by the applicant within 30 days of receiving the completed application, the original application date [is the date the agency received the unsigned, completed application form] is retained.

(b) If the agency does not receive a signed signature page within 30 days of when it received the completed application, the application is void and the agency will send a denial notice to the applicant. The previous application date will not be protected.

(c) If the agency receives a signed signature page during the 30 days immediately after the denial notice is mailed, the agency will contact the applicant to ask if the applicant wants to reapply for medical assistance. If the applicant wants to reapply, the agency may use the previous completed application form, but the application date will be the date the agency received the signed signature page according to the same provisions in R414-308-3(2).

(d) If the agency receives a signed signature page more than 30 days after the denial notice is sent, the applicant will need to reapply. The original application date is not retained.

(5) If an application is not complete, but it is signed by the applicant, the eligibility worker will ask the applicant to complete the application. If the client completes the application within 30 days of the date the agency received the application, the agency will determine eligibility based on the original application date. If the client does not

complete the application within 30 days, the original application date is not retained and the agency denies the application.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) Medical assistance applicants and recipients must verify all eligibility factors requested by the agency to establish or to redetermine eligibility. Medical assistance applicants and recipients must provide identifying information that the agency needs to meet the requirements of 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

(a) The agency will provide the client a written request of the needed verifications.

(b) The ~~[agency must give the client]~~ client has at least 10 calendar days from the date ~~[of]~~ the agency gives or mails the verification request[s the verifications] to the client to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is 5:00 p.m. on the date the agency sets as the due date in a written request to the client, but not less than 10 calendar days from the date such request is given to or mailed to the client.

~~[(d)]~~ The agency allows additional time to provide verifications if the client [may] requests additional time [to provide verifications] by the due date. The agency will set a new due date that is at least 10 days from the date the client asks for more time to provide the verifications, forms or information.

~~[(d)]~~ If [an applicant] a client has not provided required verifications by the [end of the application period or by the end of the re-certification month] due date, and has not contacted the agency to [request additional] ask for more time to provide verifications, the agency denies the application, [or the] re-certification, or ends eligibility.

(f) If the agency receives all necessary verifications during the 30 days after denying an application for lack of verifications, the date the agency receives all the verifications is the new application date. If the agency receives verifications more than 30 days after the application has been denied, the client will need to reapply for medical assistance.

(2) The agency must receive verification of an individual's income, both unearned and earned. To be eligible under Section 1902(a)(10)(A)(ii)(XIII), the Medicaid Work Incentive program, the agency may require proof such as paycheck stubs showing deductions of FICA tax; self-employment tax filing documents; or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

~~[(3) The agency denies eligibility or discontinues benefits if an applicant or recipient does not provide required verifications. In the case of a change report that would increase benefits, the agency does not increase benefits if the client does not provide required verifications.]~~

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The agency ~~[shall]~~ decides the applicant's eligibility within the time limits established in 42 CFR 435.911 and 435.912, ~~[2004]~~ 2006 ed., which are incorporated by reference.

(2) The agency ~~[may]~~ extends the time limit if the applicant asks for more time to provide requested information before the due date. The agency gives the applicant at least 10 more days after the original due date to provide verifications upon request of the applicant. The agency can allow a longer period of time for the client to provide verifications if the delay is due to circumstances beyond the client's control, an emergency, a client illness or a similar cause.

(3) An applicant may withdraw an application for medical assistance any time before the agency makes an eligibility decision on the application. An individual requesting an assessment of assets for a married couple under Section 1924 of the Social Security Act, 42 U.S.C. 1396r-5, may withdraw the request any time before the agency has completed the assessment.

R414-308-6. Eligibility Period and Re-Certification.

(1) The eligibility period begins on the effective date of eligibility as defined in R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a client must pay a spenddown, the agency completes the eligibility process and grants eligibility when the agency receives the required payment or proof of incurred medical expenses equal to the required payment for the month or months, including partial months, for which the client wants medical assistance.

(b) If a client must pay a Medicaid Work Incentive premium, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the month or months, including partial months, for which the client wants medical assistance.

(c) If a client must pay an asset co-payment for prenatal coverage, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the period of prenatal coverage.

(d) The client must make the payment or provide proof of medical expenses, if applicable, within 30 days from the mailing date of the notice that tells the client the amount owed.

(e) For ongoing months of eligibility, the client has until the 5:00 p.m. of the 10th day of the month after the benefit month to meet the spenddown or pay the Medicaid Work incentive premium. If the 10th day of the month is a weekend or holiday, the client has until 5:00 p.m. on the first business day after the 10th to meet the spenddown or pay the premium.

(f) Residents who reside in a long-term care facility and who owe a cost-of-care contribution to the medical facility must pay the medical facility directly. The resident may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in R414-304-9. The resident must pay any cost-of-care contribution not met with allowable medical bills to the medical facility. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount the client owes the facility.

(g) No eligibility exists in a month for which the client fails to meet a required spenddown or fails to pay a required Medicaid Work Incentive premium. Eligibility for the Prenatal program does not exist when the client fails to pay a required asset co-payment for the Prenatal program.

(2) The eligibility period ends on:

(a) the last day of the re-certification month;

(b) the last day of the month in which the recipient asks the agency to discontinue eligibility;

(c) the last day of the month the agency determines the individual is no longer eligible;

(d) for the Prenatal program, the last day of the month that is at least 60 days after the date the pregnancy ends, except that for Prenatal coverage for emergency services only, eligibility ends the last day of the month in which the pregnancy ends; or

(e) the date the individual dies.

(3) Recipients must re-certify eligibility for medical assistance at least once every 12 months. The agency may require recipients to re-certify eligibility more frequently when the agency:

(a) receives information about changes in a recipient's circumstances that may affect the recipient's eligibility;

(b) has information about anticipated changes in a recipient's circumstances that may affect eligibility; or

(c) knows the recipient has fluctuating income.

(4) To receive medical assistance without interruption, a recipient must complete the re-certification process by the 5:00 p.m. on the date printed on the re-certification form. The client must also provide verifications by the due date specified by the agency and must continue to meet all eligibility criteria, including meeting a spenddown [if one is owed,] or paying a Medicaid Work Incentive premium if one is owed.

(a) If the recipient does not complete the re-certification process on time, eligibility ends on the last day of the re-certification month.

(b) If the recipient does not complete the re-certification process on time, but completes the recertification including providing verifications by the 5:00 p.m. on the last business day [end-] of the month after the review month, the agency will determine whether the recipient continues to meet all eligibility criteria.

(i) The agency will reinstate benefits effective the beginning of the month after the re-certification month if the recipient continues to meet all eligibility criteria and meets any spenddown or pays the Medicaid Work Incentive premium, if applicable, within 30 days. Otherwise, the recipient remains ineligible for medical assistance.

(ii) If the recipient does not complete the re-certification process before the 5:00 p.m. of the last business day [end-] of the month following the re-certification month, eligibility will not be reinstated. The recipient will have to reapply for medical assistance.

(c) If the recipient does not meet the spenddown or pay the Medicaid Work Incentive premium on time, then eligibility ends effective the last day of the re-certification month and the recipient will have to reapply.

(5) For individuals selected for coverage under the Qualified Individuals Program, eligibility extends through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

R414-308-7. Change Reporting and Benefit Changes.

(1) A client must report to the agency reportable changes in the client's circumstances. Reportable changes are defined in R414-301-2. ~~[A client must report:]~~

(a) The due date for reporting changes is 5:00 p.m. on the 10th calendar day after the client learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income the client receives, the due date for reporting the income change is 5:00 p.m. on the day that is ten calendar days after the date the client receives such income.

(c) The due date for providing verifications of changes is 5:00 p.m. on the date the agency sets as the due date in a written notice to the client.

~~— (a) a reportable change within ten calendar days of the day the client learns of the change;~~

~~— (b) income from a new source within ten calendar days of the date the client receives money from that new source; and~~

~~— (c) an increase in income within ten days of the date the client receives the increased amount of income.~~

] (2) The agency may receive information from credible sources other than the client such as computer income matches, and from anonymous citizen reports. If the agency receives information from sources other than the client that may affect the client's eligibility, the agency will verify the information as needed depending on the source of information before using the information to change the client's

eligibility for medical assistance. Information from citizen reports must always be verified by other reliable proofs.

(3) The date of report is the date the client reports the change to the agency by 5:00 p.m. on a business day by phone, by mail, by fax transmission or in person, or the date the agency receives the information from another source. ~~[If a change is reported by mail, the agency uses the date of the postmark to decide if the report was made on time.]~~

(4) If the agency needs verification of the reported change from the client, the agency requests it in writing and provides at least ten calendar days for the client to respond.

(5) A client who provides change reports, forms or verifications by 5:00 p.m. on the due date has provided the information on time.

~~[(a) The due date is:~~

~~(i) for a change report, ten calendar days after the date the client learns of the change or ten calendar days after the client receives an increase in income or income from a new source; or~~

~~(ii) for verifications or forms, the date by which the agency tells the client the verifications or forms must be returned, but no earlier than ten calendar days after the agency mails the request to the client.~~

~~(b) If the due date falls on a Saturday, Sunday or state holiday, the report is timely if received before 5 p.m. of the first business day after the due date.~~

~~(c) If the information is mailed to the agency, the report is timely if the day of the postmark on the envelope matches or is prior to the due date.~~

~~(d) If the information is sent via facsimile transmission, the report is timely when the date of the fax transmission matches or is before the due date.~~

(6)(a) If the reported information causes an increase in a client's benefits and the agency requests verification, the increase in benefits is effective the first day of the month following:

(i) the date of the report if the agency receives verifications within ten days of the request; or

(ii) the date the verifications are received if verifications are received more than ten days after the date of the request.

(b) The agency cannot increase benefits if the agency does not receive requested verifications.

(7) If the reported information causes a decrease in the client's benefits, the agency makes changes as follows:

(a) If the agency has sufficient information to adjust benefits, the change is effective the first day of the month after the month in which the agency sends proper notice of the decrease, regardless of whether verifications have been received.

(b) If the agency does not have sufficient information to adjust benefits, the agency requests verifications from the client. The due date is at least 10 days from the date of the request.

~~[(i) The client has ten calendar days to return verifications.~~

(i) Upon receiving the verifications, the agency adjusts benefits effective the first day of the month following the month in which the agency can send proper notice.

(ii) If the verifications are not returned on time, the agency ~~may~~ discontinues benefits for the affected individuals effective the ~~first~~ end of the month in which the agency can send proper notice.

(8) Any time the agency requests verifications to determine or redetermine eligibility for an individual or a household, the agency may discontinue benefits if all required factors of eligibility are not verified by the due date. If a change does not affect all household members and verifications are not provided, the agency discontinues benefits only for the individual or individuals affected by the change.

(9) If a client fails to timely report a change or return verifications or forms by the due date, the client must repay all services and benefits paid by the Department for which the client was ineligible.

(10) If a due date falls on a weekend or holiday, the due date will be 5:00 p.m. on the first business day immediately after the due date.

~~[(10)]~~ Notwithstanding the provisions of subsections (6) and (7), changes affecting an institutionalized client's eligibility are effective as of the date of the change.

R414-308-8. Case Closure and Redetermination.

(1) The agency terminates medical assistance upon recipient request or if the agency determines the recipient is no longer eligible.

(2) To maintain ongoing eligibility, a recipient must complete the re-certification process as provided in R414-308-6. Failure to complete the re-certification process makes the recipient ineligible.

~~[(2)]~~ Before terminating a recipient's medical assistance, the agency will decide if the client is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost-Sharing programs, the Primary Care Network and the ~~[Covered at Work]~~ UPP program. Children will be referred to the Children's Health Insurance Program when applicable.

(a) The agency does not require a recipient to complete a new application, but may request more information from the recipient to complete the redetermination for other medical assistance programs. If the recipient does not provide the necessary information, the recipient's medical assistance ends.

(b) When redetermining eligibility for other programs, the agency cannot enroll an individual in a medical assistance program that is not in an open enrollment period, unless that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollments are stopped. An open enrollment period is a time when the agency accepts applications. Open enrollment applies only to the Primary Care Network, the ~~[Covered at Work]~~ UPP Program and the Children's Health Insurance Program.

R414-308-9. Improper Medical Coverage.

(1) As used in this section, services and benefits include all amounts the Department pays on behalf of the client during the period in question and includes premiums paid to any Medicaid health plans or managed care plans, Medicare, and private insurance plans; payments for prepaid mental health services; and payments made directly to service providers or to the client.

(2) A client must repay the cost of services and benefits the client receives for which the client is not eligible.

(a) If the agency determines a client was ineligible for the services or benefits received, the client must repay the Department the amount the Department paid for the services or benefits. The amount the client must repay will be reduced by the amount the client paid the agency for a Medicaid spenddown or a Medicaid Work Incentive premium for the month. If a woman who has paid an asset co-payment for coverage under Prenatal Medicaid is found to have been ineligible for the entire period of coverage under Prenatal Medicaid, the amount she must repay will be reduced by the amount she paid the agency in the form of the Prenatal asset co-payment, if applicable.

(b) If the client is eligible but the overpayment was because the spenddown, the Medicaid Work Incentive premium, the asset co-payment for prenatal services, or the cost-of-care contribution was incorrect, the client must repay the difference between the correct amount the client should have paid and what the client actually paid.

(3) A client may request a refund from the Department for any month in which the client believes that

(a) the spenddown, asset co-payment for prenatal services, or cost-of-care contribution the client paid to receive medical assistance is less than what the Department paid for medical services and benefits for the client, or

(b) the amount the client paid in the form of a spenddown, a Medicaid Work Incentive premium, a cost-of-care contribution for long-term care services, or an asset co-payment for prenatal services was more than it should have been.

(4) Upon receiving the request for a refund, the Department will determine if the client is owed a refund.

(a) In the case of an incorrect calculation of a spenddown, Medicare Work Incentive premium, cost-of-care contribution or asset co-payment for prenatal services, the refundable amount is the difference between the incorrect amount the client paid the Department for medical assistance and the correct amount that the client should have paid, less the amount the client owes the Department for any other past due, unpaid claims.

(b) In the case when the spenddown, asset co-payment for prenatal services or a cost-of-care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown, asset co-payment or cost-of-care contribution the client paid for medical assistance and the actual amount the Department paid on behalf of the client for services and benefits, less the amount the client owes the Department for any other past due, unpaid claims. The Department issues the refund only after the 12-month time-period that medical providers have to submit claims for payment.

(c) The agency does not issue a cash refund for any portion of a spenddown or cost-of-care contribution that was met with medical bills.

(5) A client who pays a premium for the Medicaid Work Incentive program cannot receive a refund even if the services paid by the Department are less than the premium the client pays.

(6) If the cost-of-care contribution a client pays a medical facility is more than the Medicaid daily rate for the number of days the client was in the medical facility, the client can request a refund from the medical facility. The Department will refund the amount owed the client only if the medical facility has sent the excess cost-of-care contribution to the Department.

(7) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department recovers the overpayment from both the alien and the sponsor.

KEY: public assistance programs, ~~records~~ application, eligibility, Medicaid

Date of Enactment or Last Substantive Amendment: ~~November 1, 2005~~ 2007

Notice of Continuation: January 31, 2003

Authorizing, and Implemented or Interpreted Law: 26-18

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Human Services, Substance Abuse and
Mental Health, State Hospital
R525-1
Medical Records

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 29434

FILED: 01/23/2007, 13:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This Rule is being repealed because the State Hospital is required to abide by the provisions found in the Health Insurance Portability and Accountability Act (HIPAA) and the Federal Alcohol and Other Drug (AOD) Confidentiality Rule within 42 CFR 2. Both are federal requirements that trump all state alcohol, drug, and medical records access laws.

SUMMARY OF THE RULE OR CHANGE: The entire rule is being repealed and all requests for medical records will conform to HIPAA and 42 CFR requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-606

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The State Hospital already conforms to HIPAA and 42 CFR requirements so repealing this rule will not increase or decrease the cost of record preparation, storage, or release of medical records than already exists at this time.

❖ **LOCAL GOVERNMENTS:** Local governments are not impacted since they do not collect, store, or release medical information from the State Hospital.

❖ **OTHER PERSONS:** Others receiving medical information from the State Hospital should already comply with HIPAA and 42 CFR requirements so repealing this rule will not increase or decrease the cost of record preparation, storage, or release of medical information other than already exists at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Others receiving medical information from the State Hospital should already comply with HIPAA and 42 CFR requirements so repealing this rule will not increase or decrease the cost of record preparation, storage, or release of medical information other than already exists at this time.

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 as allowed by the Government Records Access and Management Act's cost reimbursement provisions. 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,
STATE HOSPITAL
UTAH STATE HOSPITAL
PROVO UT 84603-0270, 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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Mark I Payne, Director

R525. Human Services, Substance Abuse and Mental Health, State Hospital.

~~R525-1. Medical Records.~~

~~R525-1-2. Access to Medical Records.~~

~~—The patient record is the property of the Utah State Hospital (USH) and is maintained for the benefit of the patient, clinical staff, and hospital. USH shall safeguard the information in the record against loss, defacement, tampering, or use by unauthorized persons.~~

~~R525-1-3. Written Consent Is Required for Disclosure of Patient Information.~~

~~—Expect as may be otherwise provided for by law, proper written consent of the patient or his legal guardian, if any (or, if a minor, the parent or legal guardian), is required for disclosure of patient information. USH staff informs each patient and new staff member of the hospital's policies regarding confidentiality and disclosure of information.~~

~~R525-1-4. Processing Requests for Patient Information.~~

~~—Requests for patient information are processed by the Medical Records Department.~~

~~R525-1-5. Disclosures of Information Are Not Given Over the Phone.~~

~~—Disclosures of information are not given over the telephone unless the disclosure of information is deemed by medical records personnel to be an emergency.~~

~~R525-1-6. Attorneys Receiving Patient Information.~~

~~—With respect to an attorney receiving patient information, USH complies with Section 78-25-25 of the Utah Code.~~

~~R525-1-7. Patient Information May Be Disclosed Upon Receipt of Authorization.~~

~~—Patient information may be disclosed to physicians, psychologists, certified social workers, appropriate agencies, and insurance companies upon receipt of an original authorization signed by the patient or guardian. The authorization must contain the following information:~~

- ~~—A. the name of the person, agency, or organization to which the information is to be disclosed;~~
- ~~—B. the specific information to be disclosed;~~
- ~~—C. the purpose for the disclosure;~~
- ~~—D. the date the consent was signed and the signature of the individual witnessing the consent; and~~
- ~~—E. a notice that the consent is valid only for 90 days.~~

~~R525-1-8. Assessments Containing Other Names Are Not Released.~~

~~—Patient assessments containing names other than that of the patient or treatment staff are not released.~~

~~R525-1-9. Patient Information is Stamped "Confidential".~~

~~—Patient information disclosed to other persons, agencies, or organizations is stamped "confidential" and may not be re-disclosed.~~

~~R525-1-10. Signed Authorization Is Retained in the Medical Record.~~

~~—Following authorized disclosure of patient information, the signed authorization is retained in the patient record with notation of the specific information disclosed, the date of the disclosure, and the signature of the individual disclosing the information.~~

~~R525-1-11. Original Patient Records Are Not Removed From USH.~~

~~—Original patient records are not removed from the premises except when there is an appropriately signed court order or with the approval of the Attorney General's Office.~~

~~R525-1-12. State Mental Health Authorities Have Access to Patient Information.~~

~~—State of Utah Mental Health Authorities shall have access to patient information without the requirement of a signed authorization.~~

~~KEY: medical records~~

~~Date of Enactment or Last Substantive Amendment: May 25, 1998~~

~~Notice of Continuation: May 20, 2003~~

~~Authorizing, and Implemented or Interpreted Law: 62A-12-205]~~

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Insurance, Administration R590-126-4 Prohibited Policy Provisions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29431

FILED: 01/22/2007, 16:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The only change to this rule is the deletion of a pre-existing condition provision in Subsection R590-126-4(2) that states that the pre-existing condition period must be reduced by any applicable creditable coverage.

SUMMARY OF THE RULE OR CHANGE: The only change to this rule is the deletion of a pre-existing condition provision in Subsection R590-126-4(2) that states that the pre-existing condition period must be reduced by any applicable creditable coverage.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-202, 31A-21-201, 31A-22-605, 31A-22-623, 31A-22-626, 31A-23a-402, and 31A-26-301

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no change in the state budget as a result of this rule. It will not cause a change in fees charged or received by the department nor will it require licensed insurers to make additional filings to the department. No change in fees or filings will need to be made. The change makes the rule consistent with market practices. The provision that has been deleted should have been deleted the last time the rule was changed in 2005 but was overlooked. The provision has never been required or enforced.
- ❖ LOCAL GOVERNMENTS: The change to this rule will have no effect on local governments since the rule deals solely with the relationship between the department and its licensees.
- ❖ OTHER PERSONS: The change to this rule will have no effect on insurance consumers or licensed insurers selling health insurance in Utah. The provision that has been deleted should have been deleted the in 2005 when the provision was first proposed and then added. This provision has never been enforced.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to this rule will have no effect on insurance consumers or licensed insurers selling health insurance in Utah. The provision that has been deleted should have been deleted the in 2005 when the provision was first proposed and then added. This provision has never been enforced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change to this rule will have no fiscal impact on Utah businesses. D. Kent Michie, Insurance Commissioner

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-126. Accident and Health Insurance Standards.****R590-126-4. Prohibited Policy Provisions.**

- (1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a probationary period not to exceed six months for specified diseases or conditions and losses resulting from disease or condition related to:

- (i) adenoids;
- (ii) appendix;
- (iii) disorder of reproductive organs;
- (iv) hernia;
- (v) tonsils; and
- (vi) varicose veins.

(b) The six-month period in Subsection (1)(a) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(c) Accident policies may not contain probationary or waiting periods.

(d) A probationary or waiting period for a specified disease policy shall not exceed 30 days.

(2) Preexisting conditions.

(a) Except as provided in Subsections (b) and (c), a policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate.

(b) A specified disease policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than six months following the issuance of the policy or certificate, unless the preexisting condition is specifically excluded.

(c) A hospital confinement indemnity policy shall not exclude a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured person unless the preexisting condition is specifically and expressly excluded.

~~(d) Any preexisting condition elimination period must be reduced by any applicable creditable coverage.]~~

(3) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(4) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;
- (c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;
- (d) administrative exams and services;
- (e) alcoholism and drug addictions;
- (f) allergy tests and treatments;
- (g) aviation;
- (h) axillary hyperhidrosis;
- (i) benefits provided under:
 - (i) Medicare or other governmental program, except Medicaid;
 - (ii) state or federal worker's compensation; or
 - (iii) employer's liability or occupational disease law.
- (j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;
- (k) charges for appointments scheduled and not kept;

(l) chiropractic;

(m) complementary and alternative medicine;

(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

(o) cosmetic surgery including gastric procedures; reversal, revision, repair or treatment related to a non-covered cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; and reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

(p) custodial care;

(q) dental care or treatment, except dental plans;

(r) dietary products, except as required by R590-194;

(s) educational and nutritional training, except as required by R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gene therapy;

(x) genetic testing;

(y) hearing aids, and examination for the prescription or fitting thereof;

(z) illegal activities, limited to losses related directly to the insured's voluntary participation;

(aa) incarceration, with respect to disability income policies;

(bb) infertility services, except as required by R590-76;

(cc) interscholastic sports, with respect to short-term nonrenewable policies;

(dd) mental or emotional disorders;

(ee) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(ff) nuclear release;

(gg) preexisting conditions or diseases as allowed under Subsection R590-126-4(2), except for coverage of congenital anomalies as required by Section 31A-22-610;

(hh) pregnancy, except for complications of pregnancy;

(ii) refractive eye surgery;

(jj) rehabilitation therapy services (physical, speech, and occupational), unless required to correct an impairment caused by a covered accident or illness;

(kk) respite care;

(ll) rest cures;

(mm) routine physical examinations;

(nn) service in the armed forces or units auxiliary to it;

(oo) services rendered by employees of hospitals, laboratories or other institutions;

(pp) services performed by a member of the covered person's immediate family;

(qq) services for which no charge is normally made in the absence of insurance;

(rr) sexual dysfunction;

(ss) shipping and handling, unless otherwise required by law;

(tt) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;

(uu) telephone/electronic consultations;

(vv) territorial limitations outside the United States;

(ww) terrorism, including acts of terrorism;

(xx) transplants;

(yy) transportation;

(zz) treatment provided in a government hospital, except for hospital indemnity policies;

(aaa) war or act of war, whether declared or undeclared; or

(bbb) others as may be approved by the commissioner.

(5) Waivers. This rule shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(6) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

KEY: health insurance**Date of Enactment or Last Substantive Amendment: [December 28, 2005]2007****Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202; 31A-21-201; 31A-22-605; 31A-22-623; 31A-22-626; 31A-23a-402; 31A-26-301**

Insurance, Administration

R590-236

HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 29430
FILED: 01/22/2007, 16:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Centers for Medicaid and Medicare Services, who approve our Health Insurance Portability and Accountability Act (HIPPA) alternative mechanism, required the change for clarification that the Utah Health Insurance (HIPUtah) Pool cannot deny a HIPPA eligible individual.

SUMMARY OF THE RULE OR CHANGE: The change clarifies that the HIPUtah cannot deny a HIPPA eligible individual.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-29-106, 31A-30-104, and 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: HIPUtah is already complying with the intent of the clarification. As a result, no filings will need to be made to the department and revenue to the department will not be affected.
- ❖ LOCAL GOVERNMENTS: The changes to this rule do not affect local governments since the rule only deals with the department and its relationship with its licensees.
- ❖ OTHER PERSONS: HIPUtah is already complying with the intent of the clarifying change being made to the rule. As a result, it will not be required to make any additional filings with the department and those using the Pool will not be affected in any way.

COMPLIANCE COSTS FOR AFFECTED PERSONS: HIPUtah is already complying with the intent of the clarifying change being made to the rule. As a result, it will not be required to make any additional filings with the department and those using the Pool will not be affected in any way.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change to this rule will not create a fiscal impact on Utah businesses. D. Kent Michie, Insurance Commissioner

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-236. HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier.****R590-236-6. HIPAA and Subsection 31A-30-108(3)(e)(i), 30-Day Provision.**

(1) This section applies to a HIPAA eligible who meets HIPUtah's eligibility requirements but does not meet HIPUtah's health underwriting criteria, having been previously denied by an individual carrier, and is issued a certificate of insurability under Section 31A-29-111.

(2)(a) A HIPAA eligible ~~must~~ may reapply with the individual carrier who denied coverage immediately prior to HIPUtah's issuance of a certificate of insurability to preserve HIPAA rights, no later than:

(i) the remainder of the 63 consecutive day time period under HIPAA; or

(ii) 30 consecutive days after the date of issuance of a certificate of insurability.

(b) R590-236-6(2)(a) applies only to a HIPAA eligible that has:

(i) submitted a substantially completed application to an individual carrier within the HIPAA 63-day time period;

(ii) is denied coverage by an individual carrier; and

(iii) makes application to HIPUtah no later than:

(I) the remainder of the 63 consecutive day time period under HIPAA; or

(II) 30 consecutive days after denial by the individual carrier.

(3) Effective Dates.

(a) A HIPAA eligible applying within the time period in R590-236-6(2)(a)(i), shall have an effective date with the individual carrier on the first day of the month following the submission of a substantially completed application, if the required premium is paid.

(b) A HIPAA eligible applying within the time period in R590-236-6(2)(a)(ii), shall have an effective date with the individual carrier on the first day of the month following the original submission of a substantially completed application to the individual carrier who denied coverage immediately prior to the application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-6(2)(a)(i) and (ii), the HIPAA eligible shall choose the effective date provided in R590-236-6(3)(a) or (b).

R590-236-7. HIPAA and Subsection 31A-30-108(3)(e)(ii)(B), 45-Day Provision.

(1) This section applies to a HIPAA eligible who applies first with HIPUtah, meets HIPUtah's eligibility requirements, but does not meet HIPUtah's health underwriting criteria and is issued a certificate of insurability under Section 31A-29-111.

(2) When a HIPAA eligible submits a substantially completed application to HIPUtah within the HIPAA 63-day time period and is issued a certificate of insurability, ~~[to preserve HIPAA rights,]~~ the HIPAA eligible ~~must~~ may make application to an individual carrier no later than:

(a) the remainder of the 63 consecutive day time period under HIPAA; or

(b) 45 consecutive days after the date of issuance of a certificate of insurability by HIPUtah.

(3) Effective Dates.

(a) A HIPAA eligible qualifying under option R590-236-7(2)(a) shall have an effective date of the first of the month following the submission of the substantially completed application to an individual carrier, if the required premium is paid.

(b) A HIPAA eligible qualifying under R590-236-7(2)(b) shall have an effective date of the day following the submission of the substantially completed application to HIPUtah, if the required premium is paid.

(c) When a HIPAA eligible applies within both time periods in R590-236-7(2)(a) and (b), the HIPAA eligible shall choose the effective date provided in R590-236-7(3)(a) or (b).

KEY: HIPAA eligibility

Date of Enactment or Last Substantive Amendment: [~~November 1, 2006~~]2007

Authorizing, and Implemented or Interpreted Law: 31A-29-106; 31A-30-104; 31A-2-201

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Insurance, Administration

R590-238

Captive Insurance Companies

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 29458

FILED: 01/30/2007, 10:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act of Title 31A, Chapter 37.

SUMMARY OF THE RULE OR CHANGE: This rule sets forth financial, reporting, record-keeping, and other requirements the commissioner deems necessary for the regulation of captive insurance companies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-37-106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This rule requires captive insurers to submit to the department annually certain reports and audits that will need to be reviewed by financial examiners. Currently, there are 32 captive insurers licensed in Utah and the Department anticipate that a minimum of 10 more will be licensed during this year. As a result, the Department has requested the addition of two financial examiners solely to examine these reports and audits, as well as an examination of the affairs and financial condition of the captive insurance companies books and records on a regular basis. The department has asked the legislature to set aside \$162,300 to pay for these two examiners. A portion of this annual expense will be paid by the captives themselves in two ways. Each captive pays the cost of the financial examinations conducted by the department on their books on a regular basis; and each captive will pay licensing costs that will go to a dedicated account for expenses of the Captive Division. Each captive will pay \$5,002 for the initial and renewal license, \$202 to file the license with the department, and a \$250 e-commerce fee. This is a total of \$5,454 for the initial license and \$5,252 for the annual renewal.

❖ **LOCAL GOVERNMENTS:** This rule will have no impact on local governments since it relates solely to the relationship between the licensee and the Department.

❖ **OTHER PERSONS:** This rule will have a fiscal impact on each licensed captive insurer. Each captive will be required to pay a total of \$5,454 for their initial license and \$5,252 to renew it annually. A captive will also be required to file an annual financial statement and an independent audit with the department. In addition, a captive will be required to file the "Independent Actuary - Reserve Opinion," which will cost the captive an estimated \$6,000 to have an independent actuary prepare it. A captive will also need to hire an independent certified public accountant (CPA) to prepare an annual audit report. This will cost an estimated \$5,000. There are a number of other forms that will need to be filed, as noted in Section R590-238-19. Some captives that do not have the in-house legal staff may need to hire an attorney and an approved captive management firm. The reason large businesses decide to create a captive is to cover risks they cannot cover through a traditional insurance policy, as well as to reduce the cost of their insurance by controlling their own risks. Whether or not these costs or savings are transferred to their consumers will vary from captive to captive. These known first year expenses will total a minimum of \$16,454. For each succeeding year, the cost will cost a minimum of \$16,252. The anticipated 10 new captives to be licensed this year will incur costs of around \$164,540 to complete the licensing process. The 32 captives already licensed will pay around \$520,064 to complete the renewal process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will have a fiscal impact on each licensed captive insurer. Each captive will be required to pay a total of \$5,454 for their initial license and \$5,252 to renew it annually. A captive will also be required to file an annual financial statement and an independent audit with the department. In addition, a captive will be required to file the "Independent Actuary - Reserve Opinion," which will cost the captive an estimated \$6,000 to have an independent actuary prepare it. A captive will also need to hire an independent certified public accountant to prepare an annual audit report. This will cost an estimated \$5,000. There are a number of other forms that will need to be filed, as noted in Section R590-238-19. Some captives that do not have the in-house legal staff may need to hire an attorney and an approved captive management firm. The reason large businesses decide to create a captive is to cover risks they cannot cover through a traditional insurance policy, as well as to reduce the cost of their insurance by controlling their own risks. Whether or not these costs or savings are transferred to their consumers will vary from captive to captive. These known first-year expenses will total a minimum of \$16,454. For each succeeding year the cost will cost a minimum of \$16,252.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will create a fiscal impact on captives who decide to be licensed within the state of Utah. It should be noted that these captives could be licensed in anyone of a number of off-shore or state locations. They decide which location will work best for them. Due to our service and lower than average expense to domesticate, many are choosing to come here. D. Kent Michie, Commissioner

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INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
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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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/15/2007 at 3:00 PM, State Office Building (behind the Capitol), Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance Administration.

R590-238. Captive Insurance Companies.

R590-238-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Section 31A-37-106.

R590-238-2. Purpose and Scope.

The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act (the Act), Chapter 37, Title 31A. This rule applies to all captive insurance companies licensed under the Act.

R590-238-3. Definitions.

The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.

R590-238-4. Annual Reporting Requirements.

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of two of its executive officers and shall be prepared using generally accepted accounting principles. The annual report may be filed electronically consistent with directions from the commissioner.

(2) An association captive insurance company, a sponsored captive insurance company, and an industrial insured captive insurance company shall observe the requirements of Section 31A-4-113 when they file an annual report on its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) The annual report shall be filed on the form prescribed in statute or in this rule.

R590-238-5. Risk Limitation.

(1) The commissioner may limit the net amount of risk a captive insurance company retains for a single risk after considering the impact of the retention on the captive insurance company's capital and surplus.

(2) The commissioner may also prescribe and demand additional capital and surplus of any captive insurance company if he determines that the captive insurance company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive insurance company.

R590-238-6. Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year ending December 31. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

(ii) The opinion of the independent certified public accountant shall cover all years presented.

(iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

(i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.

(ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.

(iv) that the accountant consents to the requirements of R590-238-10;

(v) that the accountant consents and agrees to make the work papers as defined in R590-238-10(3) available for review by the commissioner, his designee or his appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial Statements

(i) The financial statements required shall be as follows:

(A) balance sheet;

(B) statement of gain or loss from operations;

(C) statement of changes in financial position;

(D) statement of cash flow;

(E) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

(F) notes to financial statements.

(ii) The notes to financial statements shall be those required by generally accepted accounting principles and shall include:

(A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.

(e) Certification of Loss Reserves and Loss Expense Reserves of the companies opining actuary

(i) The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

(ii) The individual who certifies as to the adequacy of reserves shall be approved by the Commissioner and shall be a Fellow of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, or a Fellow of the Society of Actuaries and a member in standing of the American Academy of Actuaries.

(4) Certification shall be in such form as the commissioner deems appropriate.

R590-238-7. Designation of Independent Certified Public Accountant.

A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained. A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accountants from companies maintained by the commissioner.

R590-238-8. Notification of Adverse Financial Condition.

A company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the company in writing of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

R590-238-9. Additional Deposit Requirement.

(1) Whenever the commissioner deems that the financial condition of a company warrants additional security, the commissioner may require the company to deposit, in trust for the company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Utah or a member bank of the Federal Reserve System with the commissioner.

(2) The commissioner shall return the deposit or letter of credit of a company if the company ceases to do any business only after being satisfied that all obligations of the company have been discharged.

(3) A company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers.

(3) "Work Papers" or "working papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their audit of the company.

R590-238-11. Documentation Required to be Held in Utah by Licensed Captives.

(1) All companies licensed by the commissioner as a captive insurance company, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(2) Original documents may be kept in the offices of the company's captive manager, the company's parent, or the company itself. Accurate and complete copies shall be held in an office located in Utah that is designated by the company and approved by the commissioner.

R590-238-12. Reinsurance.

(1) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(3) The commissioner, in his discretion, may require that complete copies of all reinsurance treaties and contracts be filed and approved by him.

R590-238-13. Service Providers.

No person shall act, in or from this state, as an captive insurance manager, broker, agent, or salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

R590-238-14. Directors.

(1) Every company shall report any change in its executive officers or directors to the commissioner within thirty days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

(2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. Such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

R590-238-15. Conflict of Interest.

(1) Each company licensed in Utah is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude a person from being a director or officer in more than one insurance company.

(2) Each officer, director, and key employee shall file a yearly disclosure with the board of directors.

R590-238-16. Acquisition or Change of Control of or Merger with Domestic Company.

The acquisition or change of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103.

R590-238-17. Suspension or Revocation.

(1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:

(a) the company has not commenced business according to its plan of operation within two years of being licensed; or

(b) the company ceased to carry on insurance business in or from within Utah; or

(c) at the request of the company; or

(d) for any reason provided in Section 31A-37-505.

(2) Before the commissioner takes any action set forth under R590-238-16(1) the commissioner shall give the company notice in writing of the grounds on which he proposes to act, and shall afford the company a hearing as to such proposed action in accordance with the Utah Administrative Procedures Act, Chapter 46b, Title 63.

R590-238-18. Change of Business.

(1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

(2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.

(3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.

R590-238-19. Application and Forms.

(1) Any person that wants to form a captive insurance company shall make application to the commissioner for authority to conduct a captive insurance using the form, "Application to Form a Captive Insurance Company."

(2) Two complete copies of the application including forms, attachments, exhibits and all other papers and documents filed as a part thereof, accompanied by the appropriate filing fee, shall be filed in writing or online with the commissioner. A written application, including all required attachments and information, may be filed by personal delivery or mail addressed to: Office of the Commissioner, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114-6901, Attention: Captive Insurance Administrator.

(3) At least one of the copies of the application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.

(4) A company must include with its application, a feasibility study demonstrating the feasibility of the business plan of the company. The department may test the feasibility of the study by examining the company's corporate records, including: charter; bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and other factors as the commissioner deems necessary.

R590-238-20. Fee Schedule. Initial Application. Renewal.

(1) An applicant for a certificate of authority under the captive insurance code shall pay a nonrefundable fee established in the department's fee rule, R590-102-7 for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, R590-102-7.

(3) Each company shall pay an annual nonrefundable service fee each year in the amount established in the department's fee rule, R590-102-7 to the commissioner at the time its license is renewed for the preparation and issuance of:

(a) certificates of:

(i) compliance;

(ii) deposit;

(iii) application;
 (iv) capital; and
 (v) surplus;
 (b) transcript of records;
 (c) annual statements;
 (d) report of examination; and
 (e) other certifications as may be necessary, but excluding certificates of authority.

(4) Each company shall pay an annual nonrefundable e-commerce and internet technology services fee each year in the amount established in the department's fee rule, R590-102-14(1)(b) to the commissioner.

(5) Each captive insurance company shall pay a nonrefundable fee in the amount established in the department's fee rule, R590-102-7 for photocopies of documents to the commissioner.

R590-238-21. Authorized Forms.

(1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801)537-9174 or (801)537-9047:

(a) "Application to Form A Captive Insurance Company;"
 (b) "Biographical Affidavit For Captive Insurance Company;"
 (c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"

(e) "Utah Approved Irrevocable Letter of Credit;"
 (f) "Statement if Economic Benefit to the State of Utah;" and
 (g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."

(2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:

(a) "Application for Placement on Approved Captive Insurer Management Firm List;"
 (b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;" and
 (c) "Application For Authorization As An Independent Certified Public Accountant for Captive Insurance Companies."

(3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) The "Statement of Economic Benefit to the State of Utah" form should be filed with the initial application and for each of the 12 months ending December 31, of each applicable year.

(5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website, www.captive.utah.gov/licensing.html.

R590-238-22. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons and circumstances are not effected.

KEY: captive insurance

Date of Enactment or Last Substantive Amendment: 2007
Authorizing, and Implemented or Interpreted Law: 31A-2-201;
31A-37-106

◆ ————— ◆

Natural Resources; Forestry, Fire and State Lands **R652-20-1600** Posting Dates/Simultaneous Filing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29468

FILED: 01/31/2007, 14:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to allow for simultaneous bid offerings to be opened the next business day, if the last Monday of the month falls on a holiday.

SUMMARY OF THE RULE OR CHANGE: The change allows for the simultaneous bid offering to be opened on the first business day following a holiday, if that holiday falls on the last Monday of the month.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-6-5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The rule amendment does not affect the state budget because it merely makes allowances to delay the simultaneous bid openings by one day if the last Monday of the month falls on a legal holiday.

❖ LOCAL GOVERNMENTS: As local governments neither control the leasing of state lands nor apply for leases for the purposes of mineral extraction on state lands, this rule does not apply to them.

❖ OTHER PERSONS: The rule change would not effect other persons monetarily, although it would delay the announcement of the bid by one day, if the last Monday of the month falls on a legal holiday.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons. The due date is still 5:00 p.m. the Friday before the bid openings. This does not affect the timing of when the bids are due, just when they are opened.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no fiscal impact on businesses. The rule change only affects the day the bids are opened and announced, if the bid opening day falls on a legal holiday. Michael Styler, Executive Director

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

NATURAL RESOURCES
 FORESTRY, FIRE AND STATE LANDS
 1594 W NORTH TEMPLE
 SUITE 3520
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Joel Frandsen, Director

R652. Natural Resources, Forestry, Fire and State Lands.**R652-20. Mineral Resources.****R652-20-1600. Posting Dates/Simultaneous Filing.**

Notices of the offering of lands for simultaneous filing will run for 15 working days and are posted at times to insure that all bid openings are on the last Monday of that month, or on the first business day following the last Monday of that month, if the last Monday falls on a legal state holiday.

KEY: royalties, salt, primary term, administrative procedures
Date of Enactment or Last Substantive Amendment: [~~July 13, 2006~~2007

Notice of Continuation: January 10, 2007

Authorizing, and Implemented or Interpreted Law: 65A-6-2; 65A-6-4(3)

◆ ————— ◆

**Natural Resources; Forestry, Fire and
State Lands**

R652-140**Utah Forest Practices Act****NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 29461

FILED: 01/31/2007, 12:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices.

SUMMARY OF THE RULE OR CHANGE: This rule provides procedures for the registration of forest operators, the notification of forest practices, and provides some exceptions to the Forest Practices Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 65A-1-4(2) and Section 65A-8a-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The implementation of this rule creates a minor workload increase to the Division to maintain the database and for staff to take proactive steps to mitigate the damage that may occur during forest practices. The cost can be absorbed within existing budgets.

❖ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not normally conduct forest practices as defined in statute.

❖ **OTHER PERSONS:** There is no fee associated with the registration or notification to the Division. Costs associated with mailing, faxing forms, or delivering forms to offices would be minimal and would not exceed \$200 per year in the aggregate. Therefore, there is no cost to the operators to comply with the Forest Practices Act and the rules promulgated for its implementation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to register an operator, nor to notify the Division of impending forest practices. Costs associated with mailing, faxing forms, or delivering forms to offices would be minimal and should not exceed \$2 per year for an individual to comply with the Forest Practices Act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have no significant fiscal impact on businesses who engage in the forest practice industry. There is no charge for registration nor for notification of proposed practices. Michael Styler, Executive Director

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

**NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Joel Frandsen, Director

R652. Natural Resources; Forestry, Fire and State Lands.**R652-140. Utah Forest Practices Act.****R652-140-100. Authority and Purpose.**

This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section

65A-8a-101 et seq., to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices.

R652-140-200. Exceptions to Forest Practice.

For purposes of Section 65A-8a-101 et seq., and this rule, the term "Forest practice" does not include the control of invasive or exotic species, removal of Pinyon-Juniper woodlands, or cutting trees for posts, poles or firewood.

R652-140-300. Procedures for Registration of Operators.

(1) To register, operators shall complete and submit a printed or electronic version of a registration form provided by the Division, which includes information required under Subsection 65A-8a-103(2).

(2) The registration form shall be submitted to the Division's headquarter office or one of the Division's six administrative area offices. Offices are located in the following areas:

(a) Headquarter Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(b) Bear River Area Office, 1780 North Research Parkway, Suite 104, North Logan, UT 84341-1940.

(c) Wasatch Front Area Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(d) Central Area Office, 1311 South Airport Road, Richfield, UT 84701.

(e) Northeastern Area Office, 152 East 100 North, Vernal, UT 84078.

(f) Southwestern Area Office, 585 North Main Street, Cedar City, UT 84720.

(g) Southeastern Area Office, 1165 South Highway 191, Suite 6, Moab, UT 84532.

(3) Upon receipt of the registration form, the Division will acknowledge receipt by providing the operator a registration number and date of expiration and returning a copy of the registration form to the operator.

(4) Registration shall be valid for a period of two years from the date of receipt. At the end of the two-year period, the operator must renew the registration with the Division.

R652-140-400. Procedures for Notification of Intent to Conduct Forest Practices.

(1) At least 30 days prior to the commencement of a forest practice, the operator shall submit written notification of intent to conduct forest practices to the Division as required by Subsection 65A-8a-104(1). The 30 days shall commence on the date of postmark, if mailed, or on the date received if hand delivered or electronically submitted.

(2) Notifications shall be submitted to the Division's headquarter's office or one of the Division's six administrative area offices listed in Subsection R652-140-300(2).

(3) Operators shall submit a written notification on a form provided by the Division, a copy thereof or its electronic version, and include the information required under Subsection 65A-8a-104(2).

(4) Notifications submitted to the Division shall be acknowledged within ten days of receipt by the Division. The acknowledgment shall include information identified in Subsection 65A-8a-104(3).

KEY: registration, notification, forest practices

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 65A-8a-103; 65A-8a-104

◆ ————— ◆
Public Service Commission,
Administration
R746-409
Pipeline Safety

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29438

FILED: 01/26/2007, 14:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update references and to remove no longer used definitions found in the existing rule.

SUMMARY OF THE RULE OR CHANGE: The amendment updates the Code of Federal Regulations (CFR) reference from 10/01/2004 to 10/01/2006. This necessarily requires the adoption of Part 198 in place of Part 193. The amendment also updates the telephone number for the contact to the State's Pipeline Safety Office. The amendment further eliminates definitions for "Master Meter System" and "Public place," which are not used in the pipeline safety rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-13-3, 54-13-5, and 54-13-6

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: The proposed amendment eliminates adoption of 49 CFR Part 193; replacing 49 CFR Part 193 with 49 CFR 198, and updates all referred 49 CFR Parts (190, 191, 192, 198, and 199) to the October 1, 2006, version of the CFR

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no costs or savings anticipated for any state agency as the rule amendment simply updates references to current federal rules and to current telephone numbers.

❖ LOCAL GOVERNMENTS: There will be no costs or savings for any local governments as the rule, even with the proposed amendment, does not have application to any local government or local government activity.

❖ OTHER PERSONS: There are no costs or savings anticipated for any other persons as the rule amendment simply updates references to current federal rules and to current telephone numbers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs from the proposed amendment for a person subject to the rule as the proposed amendment simply updates references to current federal regulations and to current telephone numbers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment is not anticipated to have any fiscal impact on any business as the rule amendment simply updates references to current federal rules and to current telephone number of the responsible state agency. Rick Campbell, Commission Chairman

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: Sandy Mooy, Legal Counsel

R746. Public Service Commission, Administration.

R746-409. Pipeline Safety.

R746-409-1. General Provisions.

A. Scope and Applicability -- To enable the Commission to carry out its duties regarding pipeline safety under Chapter 13, Title 54, the following rules shall apply to persons owning or operating an intrastate pipeline facility as defined in that chapter, or a segment of that chapter including, but not limited to, master meter systems, as well as persons engaged in the transportation of gas.

B. Adoption of Parts 190, 191, 192, ~~[193]~~198, and 199 -- The Commission hereby adopts, and incorporates by this reference, CFR Title 49, Parts 190, 191, 192, ~~[193]~~198, and 199, as amended, October 1, ~~[2004]~~2006. Persons owning or operating an intrastate pipeline facility in Utah, or a segment thereof, as well as persons engaged in the transportation of gas, shall comply with the minimum safety standards specified in those Parts of CFR Title 49.

R746-409-2. Definitions.

For purposes of these rules, the following terms shall bear the following meanings:

- A. "CFR" means the Code of Federal Regulations;
- B. "Commission" means the Public Service Commission of Utah;

C. "Division" means the Division of Public Utilities, Utah Department of Commerce;

~~[D. "Master Meter System" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital and which is owned, operated and maintained by an operator that purchases the gas from an outside source.~~

~~—E]D.~~ "Part 190" means CFR Title 49, Part 190 entitled, Pipeline Safety Program Procedures.

~~[F]E.~~ "Part 191" means CFR Title 49, Part 191, entitled, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.

~~[G]E.~~ "Part 192" means CFR Title 49, Part 192 entitled, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

~~[H. "Part 193" means CFR Title 49, Part 193 entitled, Liquefied Natural Gas Facilities: Federal Safety Standards.]G.~~ "Part 198" means CFR Title 49, Part 198 entitled, Regulations for Grants to Aid State Pipeline Safety Program.

~~[I]H.~~ "Part 199" means CFR Title 49, part 199 entitled, Drug Testing.[

~~—J. "Public place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is subject to easement, deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, traverses or is likely to frequent.]~~

R746-409-4. Accidents or Incidents Reports and Annual Reports.

A. U.S. Department of Transportation -- An operator shall report to the U.S. Department of Transportation (800-424-8802) accidents or incidents involving its pipeline facilities operated within the state of Utah that cause personal injuries requiring in-patient hospitalization, fatality, or estimated damage to property totaling \$50,000 or more.

B. Commission Notification -- The Commission shall be notified of the accidents or incidents as soon as possible, consistent with public welfare and safety. In those instances where a telephonic report to the United States Department of Transportation is required, a similar report of the accident or incident shall be made by telephone to:

Utah Division of Public Utilities
Lead Pipeline Safety Engineer
P.O. Box 146751
Salt Lake City, Utah 84145-6751
Telephone: 801-530-~~[6667]~~6673
801-530-6652
800-874-0904

C. Written Report -- An operator, except for master meter systems, shall furnish to the Commission, within 30 days after the occurrence of a reportable accident or incident, a written report of the accident or incident. The report may be made on the standard USDOT form designated Accident or Incident Report, or on a form acceptable to the Commission showing the same information. If certain information is not available, the incomplete report should be submitted indicating this unavailability. When the information becomes available, a supplemental report will be submitted.

D. Annual Report -- An operator, except for master meter systems, shall submit an annual report for that system on DOT form RSPA F 7100.1-1. This report must be submitted annually, not later than March 15, for the preceding calendar year. Operators who file annual reports to federal agencies in accordance with 49 CFR, part 191, are required to file copies of the reports with this Commission. Annual reports may be sent to the same address as noted in Subsection R746-409-4B.

KEY: rules and procedures, safety, pipelines

Date of Enactment or Last Substantive Amendment: ~~June 28, 2004~~ 2007

Notice of Continuation: November 29, 2006

Authorizing, and Implemented or Interpreted Law: 54-13-3; 54-13-5; 54-13-6

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Tax Commission, Auditing

R865-6F-37

Disclosure of Reportable Transactions and Material adviser List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29437

FILED: 01/26/2007, 13:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed new section is necessary to implement the provisions of S.B. 139 (2006) for corporate franchise tax. (DAR NOTE: S.B. 139 (2006) is found at Chapter 237, Laws of Utah 2006, and was effective 01/01/2007.)

SUMMARY OF THE RULE OR CHANGE: The proposed new section indicates how a reportable transaction shall be disclosed to the commission by both a taxpayer and a material adviser; and that the list of persons a material adviser is required to maintain for federal purposes shall satisfy the state requirement for the list of persons a material adviser is required to maintain.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-1-1301 through 59-1-1309

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Any fiscal impact was taken into account in S.B. 139 (2006).
- ❖ **LOCAL GOVERNMENTS:** Any fiscal impact was taken into account in S.B. 139 (2006).
- ❖ **OTHER PERSONS:** Any fiscal impact was taken into account in S.B. 139 (2006).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Under S.B. 139 (2006), persons who participate in a reportable transaction, and a material adviser are required to make certain disclosures to the commission. Since this disclosure is also required by the Internal Revenue Service (IRS), the commission will accept copies of the documents filed with the IRS.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated costs beyond copy and postage as the same information required by the IRS. D'Arcy Dixon, Commissioner

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

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY UT 84134, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

_____ (a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886 with the Internal Revenue Service; and

_____ (b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

_____ (2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

_____ (b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264 was required to be filed with the Internal Revenue Service.

_____ (3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

_____ (b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

KEY: taxation, franchises, historic preservation, trucking industries
Date of Enactment or Last Substantive Amendment: November 17, 2006
Notice of Continuation: April 3, 2002
Authorizing, and Implemented or Interpreted Law: 59-1-1301 through 59-1-1309

◆ ————— ◆

Tax Commission, Auditing R865-91-53

Disclosure of Reportable Transactions and Material adviser List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 29436
 FILED: 01/26/2007, 13:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed new section is necessary to implement the provisions of S.B. 139 (2006) for individual income tax. (DAR NOTE: S.B. 139 (2006) is found at Chapter 237, Laws of Utah 2006, and was effective 01/01/2007.)

SUMMARY OF THE RULE OR CHANGE: The proposed new section indicates how a reportable transaction shall be disclosed to the commission by both a taxpayer and a material adviser; and that the list of persons a material adviser is required to maintain for federal purposes shall satisfy the state requirement for the list of persons a material adviser is required to maintain.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-1-1301 through 59-1-1309

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Any fiscal impact was taken into account in S.B. 139 (2006).
- ❖ **LOCAL GOVERNMENTS:** Any fiscal impact was taken into account in S.B. 139 (2006).
- ❖ **OTHER PERSONS:** Any fiscal impact was taken into account in S.B. 139 (2006).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Under S.B. 139 (2006), persons who participate in a reportable transaction, and a material adviser are required to make certain disclosures to the commission. Since this disclosure is also required by the Internal Revenue Service (IRS), the commission will accept copies of the documents filed with the IRS.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated costs beyond copying and postage as the same information is required by the IRS. D'Arcy Dixon, Commissioner

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

TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: D'Arcy Dixon, Commissioner

—————

R865. Tax Commission, Auditing.

R865-91. Income Tax.

R865-91-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886 with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264 was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: ~~July 20, 2005~~2007

Notice of Continuation: April 22, 2002

Authorizing, and Implemented or Interpreted Law: 59-1-1301 through 59-1-1309



Transportation, Operations, Maintenance

R918-2

Widening Pavement to Curb and Gutter

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 29456

FILED: 01/29/2007, 12:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: When examining the rule for renewal, it appeared that the document did not need to be an administrative rule since it only affects matters of department design and construction and does not affect citizens nor is the rule required by any statute.

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

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-46a-1

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There should be no change in budget. The department will maintain the design and construction standards set forth in this rule.
- ❖ **LOCAL GOVERNMENTS:** There should be no change in budget. The department will maintain the design and construction standards set forth in this rule.
- ❖ **OTHER PERSONS:** There should be no change in budget. The department will maintain the design and construction standards set forth in this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This does not affect third parties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no change in budget. The department will maintain the design and construction standards set forth in this rule. John R. Njord, Executive Director

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

TRANSPORTATION
OPERATIONS, MAINTENANCE
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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: John R. Njord, Executive Director

R918. Transportation, Operations, Maintenance.

~~R918-2. Widening Pavement to Curb and Gutter.~~

~~R918-2-1. Length.~~

~~Each project for widening the pavement of state highways from the edge of the existing pavement to the edge of the curb and gutter must have a length of 500 continuous feet or more.~~

~~R918-2-2. Exception.~~

~~Exceptions to the minimum length may be approved on an individual basis by the region director. In the event that a continuous length of less than 500 feet is submitted for review and approval, the following factors shall be considered in deciding if the request is in the public interest:~~

~~A. The length of curb and gutter is an extension to an already widened section that extends an existing section controlled by curb and gutter.~~

~~B. The proposed section meets all the criteria listed in R918-2-3.~~

~~C. The proposed section is not isolated and is a part of an existing planned widening of the street.~~

~~D. The expenditure for widening will promote an immediate public benefit other than an incremental part of an eventual widening that is not on any fixed time schedule.~~

~~E. The amount of widening is large enough to be economically feasible in the use of equipment, materials, and manpower.~~

~~R918-2-3. Criteria.~~

~~If the following criteria are met, the UDOT may authorize and pay for the widening of the pavement from the edge of the existing pavement to the edge of the curb and gutter, provided funds are available.~~

~~A. New curb and gutter will be installed by others in accordance with specifications established by the local government and approved by the UDOT. A permit issued by the UDOT prior to commencement of construction is required.~~

~~B. New curb and gutter must maintain continuity of drainage with existing or planned drainage facilities and include all necessary drop inlets, storm drains, storm drain connections, driveway approaches, handicap ramps, and any other necessary appertaining features.~~

~~C. Utility adjustment, relocation, and removal where necessary, will be required in accordance with UDOT rules.~~

— D. If private right of way is required for the new curb, gutter, and sidewalk, a right of way of sufficient width to accommodate roadside features must be provided by others at no cost to UDOT.

— E. Work performed by others within the existing right of way will be subject to permit fees and bonding requirements as described in Utah Department of Transportation Policy 08A6-2, Accommodation of Utilities on Highway Right of Way.

— F. Untreated base course of a predetermined design thickness in place shall also be required of the project sponsor.

R918-2-4. Authority.

— Authorization for widening projects may be granted when the criteria are met in accordance with Section 72-1-205.

KEY: drainage, highway construction

Date of Enactment or Last Substantive Amendment: August 19, 2002

Authorizing, and Implemented or Interpreted Law: 72-201; 72-1-205; 72-1-208; 72-1-303



Transportation, Program Development
R926-4
 Establishing and Defining a Functional
 Classification of Highways in the State
 of Utah

NOTICE OF PROPOSED RULE

(New Rule)

DAR File No.: 29455

FILED: 01/29/2007, 11:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is required by Section 72-4-102.5.

SUMMARY OF THE RULE OR CHANGE: The rule sets out the procedure by which roads are classified by function.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-4-102.5

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Highway Functional Classification -- Concepts, Criteria, and Procedures, U.S. Department of Transportation, Federal Highway Administration, Publication No. FHWA-ED-90-006, March 1989

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: It is anticipated that there will be costs for conducting this functional classification, but it is impossible to estimate how much. The costs will involve staff time in analyzing roads, census bureau information, and requests from local officials.

❖ LOCAL GOVERNMENTS: Local governments may have some costs, but only if they choose to submit requests to the

Department regarding functional classifications. It is impossible to estimate how much these costs will be.

❖ OTHER PERSONS: There should be no costs to other persons since the project only involves analysis by government and not third parties.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no costs to other persons since the project only involves analysis by government and not third parties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no costs to other persons since the project only involves analysis by government and not third parties. John R. Njord, Executive Director

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

TRANSPORTATION
 PROGRAM DEVELOPMENT
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY UT 84119-5998, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2007

AUTHORIZED BY: John R. Njord, Executive Director

R926. Transportation, Program Development.
R926-4. Establishing and Defining a Functional Classification of Highways in the State of Utah.

R926-4-1. Authority.

This rule establishes the procedure and criteria by which highways shall be functionally classified as required by Utah Code Ann. Section 72-4-102.5

R926-4-2. Incorporation by Reference.

The Department incorporates by reference Federal Highway Administration Publication No. FHWA-ED-90-006, "Highway Functional Classification - Concepts, Criteria, and Procedures" (U.S. Department of Transportation, March 1989). The publication will be referred to as the "Functional Classification Manual".

R926-4-3. Initiating a Change in the Functionally Classified Road System.

A request to consider changing the functional classification of an existing roadway may be initiated by an official of the local transportation agency responsible for the route by the Metropolitan

Planning Organization with jurisdiction over the proposed change or by a Department staff member. Requests are to be forwarded to the Department's Systems Planning and Programming Division through the office of the local Region Director.

R926-4-4. Procedure to Determine Functional Classification of Roads.

(1) The procedure the Department uses to determine the functional classification for roads will follow the concepts and procedures identified in the Functional Classification Manual and will meet the guidelines relating to the extent of road miles and vehicle miles traveled of rural and urban functional classification systems. The final system will be as reviewed and approved by the Federal Highway Administration.

(2) Traffic volumes and road mileage will come from data the Department reports on an annual basis. Population information will be taken from the most recent U.S. Census information.

R926-4-5. Schedule for Updating the Functionally Classified Road System.

(1) The schedule to update the Functionally Classified Road System is based on the U. S. Census, with a major 10-year update initiated after the release of census date. There will also be a mid-census review and an opportunity for annual adjustments.

(2) The major, or decennial, update, begins after the US Census Bureau releases information on urban and urbanized areas based on population and population density. This is historically completed about three years after the census count. Boundaries for small urban and urbanized areas are initially determined by the Census Bureau. They are then adjusted to fit local conditions by the Department in consultation with the underlying local authorities responsible for transportation. Road functional classifications are then determined by the Department, using the same consultation process and the concepts, procedures, and criteria identified in the Functional Classification Manual. The recommended functional classification changes are then forwarded to the local Federal Highway Administration Division Office for review, approval, and adoption as the Functionally Classified Highway System for the state.

(3) The mid-census review is initiated by the Department approximately five years after the major update has been completed and is similar to the decennial update. Road functional classifications are reviewed on the entire system, using the procedures and criteria identified in the Functional Classification Manual. The Department will consult with local official and forward recommended changes to the local Federal Highway Administration Division Office for review, approval, and adoption. Changes to urban boundaries and related rural or urban classifications are not considered in this review.

(4) Each year, the Department will review proposals to make changes in functional classification. This adjustment considers routes that experienced changes that were unforeseen during the regular system-wide review process and which are of a time-sensitive nature that precludes waiting for the next regular review. This adjustment is for minor revisions only and will not consider changes in mileage or vehicle miles traveled limits, boundary, or urban-rural classification changes.

KEY: functional classification, roads, transportation, census Date of Enactment or Last Substantive Amendment: 2007 Authorizing, and Implemented or Interpreted Law: 72-4-102.5

◆ ————— ◆
**Workforce Services, Employment
 Development
 R986-700
 Child Care Assistance**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29491

FILED: 02/01/2007, 19:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to establish rules for provider overpayments and disqualifications.

SUMMARY OF THE RULE OR CHANGE: Child care providers are only authorized to remove funds from a client's electronic benefit transfer account if the Department authorized the funds for that provider. Since providers had no way of knowing what sum had been authorized, some providers removed funds they were not authorized to take. The Department created an Internet computer program so providers can find out exactly how much they are authorized to remove from a client's child care funds. Now that the providers have that information, there will be no reason for a provider removing unauthorized funds from a client's account. If a provider removes funds without authorization, the provider can be disqualified from receipt of child care funds.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: These proposed amendments will have no effect on the state budget. These proposed changes only impact child care providers. There are no anticipated costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: There will be no costs or savings to local government as these changes only affect child care providers.
- ❖ OTHER PERSONS: There will be no costs or savings to other persons. This program is mostly funded with federal funds and there are no costs associated with this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child care providers who fraudulently remove child care funds may be disqualified from receipt of child care funds. While there are no costs associate with this rule, fraudulent child care providers could lose funds if they become disqualified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business with the exception of child care providers who fraudulently obtain child care funds. Those fraudulent providers could lose business if they are disqualified. There will be no fiscal impact for employers who do not fraudulently obtain child care funds. Tani Downing, Executive Director

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: Tani Downing, Executive Director

**R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-705. Eligible Providers and Provider Settings.**

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
 - (i) licensed homes;
 - (ii) licensed family group homes; and
 - (iii) licensed child care centers.
- (b) license exempt providers who are not required by law to be licensed and are either:
 - (i) license exempt centers; or
 - (ii) related to the client and/or the child. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great or persons who meet any of the above relationships even if the marriage has been terminated.
- (c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) If a new client has a provider who is providing child care at the time the client applies for CC or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive CC for a

period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(3) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

- (a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or
- (b) because a child in the home has special needs which cannot be otherwise accommodated; or
- (c) which will accommodate the hours when the client needs child care; or
- (d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(4) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph (3) or (4) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(6) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

- (a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;
- (b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;
- (c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;
- (d) there are no individuals residing in the home who have a conviction for a misdemeanor which is an offense against a person, or any felony conviction, or have been subject to a supported finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(7) The following providers are not eligible for receipt of a CC payment:

- (a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;
- (b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

[and]

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court[-]; and

(i) any provider disqualified under R986-700-718.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows:

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the authorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment, no further action will be taken on that overpayment.

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month.

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination.

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) CC providers disqualified under subsection (1) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(3) A CC provider overpayment will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

KEY: child care

Date of Enactment or Last Substantive Amendment: ~~February 1, 2007~~

Notice of Continuation: September 14, 2005

Authorizing, and Implemented or Interpreted Law: 35A-3-310

◆ ————— ◆

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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 between paragraphs (· · · · ·) indicates that unaffected text, either whole sections or subsections, 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 March 19, 2007. At its option, the agency may hold public hearings.

From the end of the waiting period through June 15, 2007, 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.

The Changes in Proposed Rules Begin on the Following Page.

**Commerce, Occupational and
Professional Licensing
R156-56-704
Statewide Amendments to the IBC**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29078
Filed: 01/18/2007, 11:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a public rule hearing conducted on 11/15/2006, the Division and the Uniform Building Code Commission are proposing these additional changes. At the public hearing, comments were made that the proposed rule amendment needed some further technical clarification regarding the requirement for closed parking garages and that the requirement to have a sprinkler system in all open parking garages over 5,000 square feet seemed to be unnecessary and expensive overkill in many instances. The reason for the original rule amendment was explained that many parking garages do not have adequate fire department vehicle or equipment access to fight a fire that may occur in a vehicle. It was suggested that the sprinkler requirements be imposed only in open parking garages which do not have reasonable access to fire department equipment rather than to all garages over 5,000 square feet. The Uniform Building Code Commission and their fire committee agreed to this change in the proposed rule amendment. This change in proposed rule amendment changes the requirement that the sprinkler system be required if the open parking garage is over 5,000 square feet to only require the sprinkler in open garages if the fire department does not have reasonable access (within 150 feet from any point in the garage) or if the building does not have a Class 1 standpipe. This change in proposed rule amendment also clarifies the requirement for a sprinkler system which is required in all parking garages that are enclosed. This is not a change from prior requirements but the newly added language seemed to confuse the requirement for closed garages. This change in proposed rule amendment incorporates changes in the fire code requirements that are also being proposed by the State Fire Marshal. The Uniform Building Code Commission does not have authority over the fire codes; however, the Commission does correlate building codes to fire code requirements to eliminate confusion of what may be allowed in a building. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the October 15, 2006, issue of the Utah State Bulletin, on page 10. Underlining in the rule below indicates text that has been added since the publication of the proposed rule 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.)

SUMMARY OF THE RULE OR CHANGE: Subsections R156-56-704(23) and R156-56-704(24) regarding Sections (F)903.2.9 and (F)903.2.9.1 are amended consistent with the reasons expressed above to change the requirement for automatic sprinkler systems in open garages which do not have adequate access to fire fighting resources and to coordinate with requirements proposed by the State Fire Marshal. In Subsection R156-56-704(51), the reference to Section 2306.1.5 is corrected. The remaining subsection numbers in the rule have been renumbered to reflect the addition of subsections (23) and (24) regarding the parking garage amendments.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** No additional costs or savings are anticipated beyond those previously identified in the original proposed rule amendment filing as a result of this change in proposed rule amendment. This change may, however, result in substantially lower costs than originally proposed.
- ❖ **LOCAL GOVERNMENTS:** No additional costs or savings are anticipated beyond those previously identified in the original proposed rule amendment filing as a result of this change in proposed rule amendment. This change may, however, result in substantially lower costs than originally proposed.
- ❖ **OTHER PERSONS:** No additional costs or savings are anticipated beyond those previously identified in the original proposed rule amendment filing as a result of this change in proposed rule amendment. This change may, however, result in substantially lower costs than originally proposed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs or savings are anticipated beyond those previously identified in the original proposed rule amendment filing as a result of this change in proposed rule amendment. This change may, however, result in substantially lower costs than originally proposed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change in proposed rule contains an amendment regarding sprinklers in parking garages over 5,000 square feet. The State Fire Marshal's office intends to make a similar rule filing. Other than a cost in building these parking garages, no additional 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:

Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/19/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 03/27/2007

AUTHORIZED BY: F. David Stanley, Director

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

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

.....

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

2. Where a Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or
(~~20~~23) ~~In~~ Section (F)903.2.9 ~~[the exception]~~ is deleted and replaced with the following:

(F)903.2.9 Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.4 or where located beneath other groups.

Exception 1: ~~[Enclosed p]~~ Parking garages of less than 5,000 square feet (464 m²) located beneath Group R-3 occupancies.

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

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

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

(~~24~~24) ~~In~~ Section (F)903.2.9.1 ~~[is deleted and replaced with the following:~~

~~(F)903.2.9.1 Parking garages. An automatic sprinkler system shall be provided throughout buildings used for parking or storage of vehicles.]the last clause" where the fire area exceeds 5,000 square feet (464 m²)" is deleted.~~

(~~23~~25) Section (F)904.11 and Subsections (F)904.11.3, (F)904.11.3.1, (F)904.11.4 and (F)904.11.4.1 are deleted and replaced with the following:

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

accordance with the referenced standard for wet-chemical extinguishing systems, NFPA 17A.

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

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

(~~24~~26) Section (F)907.2.10 is deleted and replaced with the following:

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

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

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

1. In sleeping areas.

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

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

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

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

2. In each room used for sleeping purposes.

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

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

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

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

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

disconnecting switch other than as required for overcurrent protection.

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

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

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

(~~25~~27) In Section 1008.1.8.3, a new subparagraph (5) is added as follows:

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

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

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

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

(~~26~~28) In Section 1009.3, Exception #4 is deleted and replaced with the following:

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

(~~27~~29) In Section 1009.10 Exception 6 is added as follows:

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

(~~28~~30) Section 1012.3 is amended to include the following exception at the end of the section:

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

tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32 mm) to a maximum of 2 3/4 inches (70 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

(~~29~~31) In Section 1013.2 Exception 3 is added as follows:

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

(~~30~~32) In Section 1015.2.2 the following sentence is added at the end:

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

(~~31~~33) A new Section 1109.7.1 is added as follows:

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

(~~32~~34) In Section 1208.4 subparagraph 1 is deleted and replaced with the following:

1. The unit shall have a living room of not less than 165 square feet (15.3 m²) of floor area. An additional 100 square feet (9.3 m²) of floor area shall be provided for each occupant of such unit in excess of two.

(~~33~~35) Section 1405.3 is deleted and replaced with the following:

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

(~~34~~36) In Section 1605.2.1, the formula shown as "f₂ = 0.2 for other roof configurations" is deleted and replaced with the following:

f₂ = 0.20 + .025(A-5) for other configurations where roof snow load exceeds 30 psf

f₂ = 0 for roof snow loads of 30 psf (1.44kN/m²) or less.

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

(~~35~~37) In Section 1605.3.1 and section 1605.3.2, Exception number 2 in each section is deleted and replaced with the following:

2. Flat roof snow loads of 30 pounds per square foot (1.44 kNm²) or less need not be combined with seismic loads. Where flat roof snow loads exceed 30 pounds per square foot (1.44 kNm²), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads. W_s as calculated below, shall be combined with seismic loads.

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

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

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

P_f = Design roof snow load, psf

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

(~~36~~38) In Table 1607.1 number 9 is deleted and replaced with the following:

TABLE 1607.1 NUMBER 9

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

(~~37~~39) Section 1608.1 is deleted and replaced with the following:

1608.1 General. Except as modified in section 1608.1.1, 1608.1.2, and 1608.1.3 design snow loads shall be determined in accordance with Section 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607.

(~~38~~40) Section 1608.1.1 is added as follows:

1608.1.1 Section 7.4.5 of Section 7 of ASCE 7 referenced in Section 1608.1 of the IBC is deleted and replaced with the following:

Section 7.4.5 Ice Dams and Icicles Along Eaves. Where ground snow loads exceed 75 psf, eaves shall be capable of sustaining a uniformly distributed load of 2p_F on all overhanging portions. No other loads except dead loads shall be present on the roof when this uniformly distributed load is applied. All building exits under down-slope eaves shall be protected from sliding snow and ice.

(~~39~~41) Section 1608.1.2 is added as follows:

1608.1.2 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: P_g = (P_o² + S²(A-A_o)²)^{0.5} for A greater than A_o, and P_g = P_o for A less than or equal to A_o.

WHERE

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

P_o = Base ground snow load (psf) from Table No. 1608.1.2(a)

S = Change in ground snow load with elevation (psf/100 ft.)

From Table No. 1608.1.2(a)

A = Elevation above sea level at the site (ft./1000)

A_o = Base ground snow elevation from Table 1608.1.2(a) (ft./1000)

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

The building official may also directly adopt roof snow loads in accordance with Table 1608.1.2(b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with section 1607.11 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.

(~~40~~42) Table 1608.1.2(a) and Table 1608.1.2(b) are added as follows:

TABLE NO. 1608.1.2(a)
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

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

TABLE NO. 1608.1.2(b)
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS (2)

	Roof Snow Load (PSF)	Ground Snow Load (PSF)	
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			
Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43
Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43
Emery County			
Castledale	5660 ft.	30	43
Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43

Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43
West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43
Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6800 ft.	100	142
Park City	8400 ft.	162	231
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

NOTES

- (1) The IBC requires a minimum live load - See 1607.11.2.
(2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

([44]43) Section 1608.1.3 is added as follows:

1608.1.3 Thermal Factor. The value for the thermal factor, C_t , used in calculation of p_f shall be determined from Table 7.3 in ASCE 7.

Exception: Except for unheated structures, the value of C_t need not exceed 1.0 when ground snow load, P_g is calculated using Section 1608.1.2 as amended.

([42]44) Section 1608.2 is deleted and replaced with the following:

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United

States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

([43]45) In Section 1609.1.1 a new exception number 5 is added as follows:

5. The wind design procedure as found in Section 1616 through 1624 of the 1997 Uniform Building Code may be used as an alternative wind design procedure provided that the building or component being designed meets the limits for the Simplified Method as defined in ASCE 6.4.1.1 and 6.4.1.2 of ASCE 7. The Importance Factor, I , shall be determined in accordance with Table 6-1 of ASCE 7.

([44]46) Section 1613.7 is added as follows:

1613.7 ASCE 12.7.2 and 12.14.18.1 of Section 12 of ASCE 7 referenced in Section 1613.1, Definition of W , Item 4 is deleted and replaced with the following:

4. Where the flat roof snow load, P_f , exceeds 30 psf, the snow load included in seismic design shall be calculated, in accordance with the following formula: $W_s = (0.20 + 0.025(A-5))P_f$ is greater than or equal to $0.20 P_f$

WHERE:

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

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

P_f = Design roof snow load, psf

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

([45]47) A new Section 1613.8 is added as follows:

1613.8 ASCE 7, Section 13.5.6.2.2 paragraph (e) is modified to read as follows:

(e) Penetrations shall have a sleeve or adapter through the ceiling tile to allow for free movement of at least 1 inch (25 mm) in all horizontal directions.

Exceptions:

1. Where rigid braces are used to limit lateral deflections.
2. At fire sprinkler heads in frangible surfaces per NFPA 13.

([46]48) Section 1805.5 is deleted and replaced with the following:

1805.5 Foundation walls. Concrete and masonry foundation walls shall be designed in accordance with Chapter 19 or 21, respectively. Foundation walls that are laterally supported at the top and bottom and within the parameters of Tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section 1805.5.8.

([47]49) A new section 1805.5.8 is added as follows:

1805.5.8 Empirical foundation design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member

construction, shall be permitted to have concrete foundations constructed in accordance with Table 1805.5(6).

([48]50) Table 1805.5(6) is added as follows:

Table 1805.5(6), entitled "Empirical Foundation Walls, dated January 1, 2007, published by the Department of Commerce, Division of Occupational and Professional Licensing is hereby adopted and incorporated by reference. Table 1805.5(6) identifies foundation requirements for empirical walls.

([49]51) A new section 2306.1.[4]5 is added as follows:

2306.1.[4]5 Load duration factors. The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Frequently Used Load Duration Factors, C_d , of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1524 M).

([50]52) In Section 2308.6 the following exception is added:

Exception: Where foundation plates or sills are bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors, embedded at least 7 inches (178 mm) into concrete or masonry and spaced not more than 32 inches (816 mm) apart, there shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece. A properly sized nut and washer shall be tightened on each bolt to the plate.

([51]53) Section 2506.2.1 is deleted and replaced with the following:

2506.2.1 Other materials. Metal suspension systems for acoustical and lay-in panel ceilings shall conform with ASTM C635 listed in Chapter 35 and Section 13.5.6 of ASCE 7-05, as amended in Section 1613.8, for installation in high seismic areas.

([52]54) In Section 2902.1, the title for Table 2902.1 is deleted and replaced with the following and footnote e is added as follows: Table 2902.1, Minimum Number of Required Plumbing Facilities^{a, e}.

FOOTNOTE: e. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

([53]55) Section 3006.5 Shunt Trip, the following exception is added:

Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.

([54]56) A new section 3403.2.4 is added as follows:

3403.2.4 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with 75% of the seismic forces as specified in Section 1613. When allowed by the local building official, alternate methods of equivalent strength as referenced in Subsection R156-56-701(2) will be considered when accompanied by engineer sealed drawings, details and calculations. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce, or remove the deficient feature.

EXCEPTIONS:

1. Group R-3 and U occupancies.
2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not

exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

([55]57) Section 3406.4 is deleted and replaced with the following:

3406.4 Change in Occupancy. When a change in occupancy results in a structure being reclassified to a higher Occupancy Category (as defined in Table 1604.5), or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. Specific seismic detailing requirements of this code or ASCE 7 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the existing and retrofit (if any) detailing providing. Alternatively, the building official may allow the structure to be upgraded in accordance with referenced sections as found in Subsection R156-56-701(2).

2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located in a seismic map area where S_{DS} is less than 0.33, compliance with the seismic requirements of this code and ASCE 7 are not required.

3. Where design occupant load increase is less than 25 occupants and the Occupancy Category does not change.

([56]58) The exception in 3409.1 is deleted and replaced with the following:

Exception: Type B dwelling or sleeping units required by section 1107 are not required to be provided in existing buildings and facilities, except when an existing occupancy is changed to R-2.

([57]59) In Section 3409.4, number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy as determined in section 1107.6.2, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling or sleeping units shall be Type A dwelling units.

([58]60) The following referenced standard is added under NFPA in chapter 35:

TABLE		
Number	Title	Referenced in code Section number
720-05	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	907.2.10, 907.2.10.5

KEY: contractors, building codes, building inspection, licensing Date of Enactment or Last Substantive Amendment: [January 4,]2007

Notice of Continuation: May 16, 2002 Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-56-1; 58-56-4(2); 58-56-6(2)(a)



FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Administrative Services, Finance **R25-14** Payment of Attorneys Fees in Death Penalty Cases

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29424
FILED: 01/17/2007, 12:46

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: Section 78-35a-202 requires the Division of Finance to pay the cost of counsel and other reasonable litigation expenses in providing representation to indigent persons in death penalty cases. It further requires the Division of Finance to establish rules to enact the provision.

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 since this rule became effective.

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 required by statute. It is necessary to define both the legal services eligible for reimbursement and the limits for amounts paid for legal services. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
FINANCE
Room 2110 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:

Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 01/17/2007



Administrative Services, Fleet Operations **R27-5** Fleet Tracking

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29457
FILED: 01/29/2007, 13:29

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Subsection 63A-9-401(1)(b) which requires the Division of Fleet Operations (DFO) to establish one or more fleet automation and information systems for state vehicles.

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 purpose of this rule is to ensure that state vehicles and miscellaneous equipment under the ownership or control of all state agencies are accounted for and properly inventoried. This rule is required in fleet statute. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 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:

Margaret Chambers at the above address, by phone at 801-538-9675, by FAX at 801-538-1773, or by Internet E-mail at margareтчambers@utah.gov

AUTHORIZED BY: Margaret Chambers, Director

EFFECTIVE: 01/29/2007

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Agriculture and Food, Plant Industry
R68-19
Compliance Procedures

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29453
FILED: 01/29/2007, 11:39

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is promulgated by the Division of Plant Industry (Division), within the Department of Agriculture and Food (Department) under authority of Subsection 4-2-2(1)(j) which empowers the Department to make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture. Authority is also found in Subsection 4-2-2(1)(i) which directs the Department to promulgate rules necessary for the effective administration of the agricultural laws of the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received the last five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is needed to enforce any violations involving in Title 4, Chapter 11; Title 4, Chapter 12; Title 4, Chapter 13; Title 4, Chapter 14; Title 4, Chapter 15; Title 4, Chapter 16; and Title 4, Chapter 17. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clair Allen or Kathleen Mathews at the above address, by phone at 801-538-7180 or 801-538-7103, by FAX at 801-538-7189 or 801-538-7126, or by Internet E-mail at ClairAllen@utah.gov or kmathews@utah.gov

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 01/29/2007

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Commerce, Consumer Protection
R152-11
Utah Consumer Sales Practices Act

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29470
FILED: 02/01/2007, 09:37

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is adopted pursuant to the rule writing authority granted to the Division in Section 13-11-8 which requires the Division to adopt substantive rules that prohibit with specificity acts or practices that violate the Utah Consumer Sales Practices 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: Since this rule was last reviewed, the Division has received no written comments with respect to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets out those acts or practices which are considered deceptive under the Utah Consumer Sales Practices Act and provides a standard for businesses to follow. The need to set out those acts or practices and the need to establish a standard for businesses continues to exist. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at tcopeland@utah.gov

AUTHORIZED BY: Kevin V Olsen, Director

EFFECTIVE: 02/01/2007

continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 01/30/2007



Commerce, Occupational and Professional Licensing
R156-24a
 Physical Therapist Practice Act Rules

Commerce, Occupational and Professional Licensing
R156-26a
 Certified Public Accountant Licensing Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29459
 FILED: 01/30/2007, 13:16

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 24a, provides for the licensure of physical therapists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-24a-108(3) provides that the Physical Therapy Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 24a, with respect to physical therapists.

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 rule was last reviewed in April 2002, the Division has received no written comments with respect to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 24a, with respect to physical therapists. The rule should also be

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29473
 FILED: 02/01/2007, 10:04

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 26a, provides for the licensure of certified public accountants. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-24a-201(3) provides that the Utah Board of Accountancy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 26a, with respect to certified public accountants.

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 rule was last reviewed in April 2002, the Division has amended the rule five times. In April 2004, the Division file a rule amendment which would delete the maximum number of hours of continuing professional education that could be obtained through self-

study type courses. In response to that proposed rule amendment, the Division received the following letters and emails which all supported the proposed amendment: an 04/30/2004 letter from the Utah Association of CPAs; a 05/03/2004 e-mail from Althea Potts; a 05/03/2004 e-mail from Bart Morrill; and a 05/06/2004 email from Faith Jones. The Division made this proposed rule amendment effective on 05/24/2004. In all of the other additional proposed rule filings that have been made with respect to this rule, the Division has received no written comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 26a, with respect to certified public accountants. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 02/01/2007

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**Commerce, Occupational and
Professional Licensing**

R156-28

Veterinary Practice Act Rules

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29472
FILED: 02/01/2007, 10:03

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 28, provides for the licensure of veterinarians and veterinarian interns. Subsection 58-1-106(1)(a) provides that the Division

may adopt and enforce rules to administer Title 58. Subsection 58-28-201(3) provides that the Veterinary Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 28, with respect to veterinarians and veterinarian interns.

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 rule was last reviewed in April 2002, the Division has received no written comments with respect to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 28, with respect to veterinarians and veterinarian interns. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 02/01/2007
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**Commerce, Occupational and
Professional Licensing**

R156-41

**Speech-Language Pathology and
Audiology Licensing Act Rules**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29471
FILED: 02/01/2007, 10:01

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 41, provides for the licensure of speech-language pathologists and audiologists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-41-6(3) provides that the Speech-Language Pathologist and Audiologist Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 41, with respect to speech-language pathologists and audiologists.

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 rule was last reviewed in April 2002, the Division has received no written comments with respect to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 41, with respect to speech-language pathologists and audiologists. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:
 Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 02/01/2007



Corrections, Administration
R251-305
 Visiting at Community Correctional Centers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 29462
 FILED: 01/31/2007, 12:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 64-13-17 which allows the Department to make rules concerning visitors to correctional facilities and the procedures necessary to maintain safety and security.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the Department.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides the policies and procedures controlling visiting at Community Correctional Centers, which are necessary to maintain the safety and security of staff, offenders, visitors, and Center facilities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER UT 84020-9549, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Gary Ogilvie at the above address, by phone at 801-545-5514, by FAX at 801-545-5523, or by Internet E-mail at gogilvie@utah.gov

AUTHORIZED BY: Thomas E. Patterson, Executive Director

EFFECTIVE: 01/31/2007



Corrections, Administration
R251-306
 Sponsors in Community Correctional Centers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 29463
 FILED: 01/31/2007, 12:42

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 63-46a-3, 64-13-10, and 64-13-17 which require the Department to provide programs and rules to accomplish its purposes. This rule provides the policies and procedures for sponsors working with offenders in the Community Correctional Centers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the Department.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides the Department's policy for applying to be a sponsor, and sponsors accompanying Community Correctional Center offenders into the community.

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

CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gary Ogilvie at the above address, by phone at 801-545-5514, by FAX at 801-545-5523, or by Internet E-mail at gogilvie@utah.gov

AUTHORIZED BY: Thomas E. Patterson, Executive Director

EFFECTIVE: 01/31/2007

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**Corrections, Administration
R251-707
Legal Access**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29464
FILED: 01/31/2007, 12:45

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 63-46a-3, 64-13-7, 64-13-10, and 64-13-17 which allow the Department to adopt procedures in accordance with its responsibilities. The Department has the responsibility to

provide policies and procedures which enable inmates access to courts and counsel while maintaining safety and security.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides the policy and procedures necessary for inmates to access their counsel and the courts.

These policies and procedures are necessary to maintain the safety and security of the staff, inmates, visitors, and property in a correctional facility.

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

CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gary Ogilvie at the above address, by phone at 801-545-5514, by FAX at 801-545-5523, or by Internet E-mail at gogilvie@utah.gov

AUTHORIZED BY: Thomas E. Patterson, Executive Director

EFFECTIVE: 01/31/2007

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**Corrections, Administration
R251-710
Search**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29465
FILED: 01/31/2007, 12:49

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 64-13-10, and Subsections 64-13-14(1) and 64-13-17(2). The rule provides the Department's policy, procedures, and requirements for conducting searches.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the Department.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides the policies and procedures for conducting searches, in a lawful manner, and helps maintain safety and security for staff, inmates, visitors, and correctional facilities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER UT 84020-9549, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Gary Ogilvie at the above address, by phone at 801-545-5514, by FAX at 801-545-5523, or by Internet E-mail at gogilvie@utah.gov

AUTHORIZED BY: Thomas E. Patterson, Executive Director

EFFECTIVE: 01/31/2007

because it allows payment for an emergency room assessment to determine whether client treatment is routine, urgent, or emergent. The rule, therefore, promotes cost effective service that meets the client's needs and provides for efficient administration of the Medicaid program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 HEALTH CARE FINANCING,
 COVERAGE AND REIMBURSEMENT POLICY
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/26/2007

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**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-4A
 Outpatient Hospital Services: Payment
 of Triage Fee**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 29441
 FILED: 01/26/2007, 16:35

**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 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law and Section 26-18-3 requires the Department to administer the Medicaid program. The payment of a triage fee for outpatient hospital services is a necessary part of the administration of the Medicaid program.

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 or oral comments were received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary

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**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-7C
 Alternative Remedies for Nursing
 Facilities**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE No.: 29442
 FILED: 01/26/2007, 16:39

**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 26-18-3 requires the Department of Health to administer the Medicaid program. In addition, 42 U.S.C. 1396r(h) specifies remedies for nursing facilities that do not comply with Medicaid program requirements.

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 or oral comments were received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it implements the enforcement process for nursing

facilities that do not comply with Medicaid program requirements. Therefore, this rule should be continued.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/26/2007

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

R414-10

Physician Services

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29435
FILED: 01/26/2007, 11:21

**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 26-18-3 requires the Department of Health to administer the Medicaid program. In addition, 42 U.S.C. 1395x(r) authorizes physician services and specifies service criteria.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because the Medicaid program requires implementation of physician services. Therefore, this rule should be continued.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/26/2007

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

R414-45

Personal Supervision by a Physician

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29466
FILED: 01/31/2007, 13:05

**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 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 requires the Department to administer the Medicaid program. 42 CFR 440.50 requires a physician to supervise medical personnel not licensed to perform physician services.

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 or oral comments were received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it allows a nurse practitioner or a physician assistant to provide medical services for clients.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/31/2007

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: 01/29/2007

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Insurance, Administration
R590-70
Insurance Holding Companies

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29451
FILED: 01/29/2007, 11:02

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201, the department's general rulemaking authority section, allows the department to write rules to implement the provisions of the insurance code. The rule provides guidance regarding Section 31A-16-105, the registration of an insurance holding company, forms to be used, and filings to be made with the department.

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 by the department regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule 590-70 contains detailed instructions for registrations and filings of Utah domestic insurers in a holding company corporate structure. Without this rule, the statute itself is not adequate to prescribe uniformity, completeness, and accuracy in compliance with the same. Without the rule there would be little or no guidance for insurers and no linkage to the department's policies, procedures, and forms. Therefore, this rule should be continued.

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Insurance, Administration
R590-95
Rule to Permit the Same Minimum Nonforfeiture Standards for Men and Women Insureds Under the 1980 CSO and 1980 CET Mortality Tables

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29447
FILED: 01/27/2007, 21:18

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201, the department's general rulemaking authority section, allows the department to write rules to implement the provisions of the insurance code. Section 31A-22-408 allows a rule to be written to set the cash surrender values and paid-up nonforfeiture benefits provided by a plan and computed by a method consistent with the principles of the Standard Nonforfeiture Law for Life Insurance. The rule provides the same cash surrender values and paid-up nonforfeiture benefits to both men and women.

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 by the department regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R590-95 was adopted because of the U.S. Supreme Court case of Arizona Governing Committee v. Norris in 1983. The court ruled that

the use of gender-based actuarial tables in an annuity for an employer's pension plan violates the federal Civil Rights Act of 1964. So, the National Association of Insurance Commissioners created a regulation that recognizes gender-blended mortality tables for nonforfeiture standards for men and women. Most states, including Utah, adopted the model regulation that allows insurance companies issuing annuity contracts to employer-clients to comply with the Norris decision. 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: 01/27/2007



Insurance, Administration **R590-99**

Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29446
FILED: 01/27/2007, 20:00

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 is the general rulemaking authority authorizing the commissioner to write rules to implement the provisions of the insurance code. The intent of the rule is to implement the provisions of Section 31A-23a-402 in the case of title insurance practices. The rule clarifies the definition of certain terms used in the title insurance industry and sets as an unfair or deceptive practice that of delaying or refusing to record documents that would result in the apparent unmarketability of title or a title which may not be insurable by another insurer. The rule also sets as a material inducement to obtaining title insurance business,

the issuance or agreement to issue title insurance when the title has not been recorded and the title is uninsurable.

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 regarding this rule have been received by the department in the past five years.

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 more important now than ever due to the fact that some agencies are not paying off state, federal, or mechanics liens, and then insuring over them. 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: 01/27/2007



Insurance, Administration **R590-102** Insurance Department Fee Payment Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29443
FILED: 01/26/2007, 17:23

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: Subsections 31A-3-103(2) and (4) require the department to set regulatory fees and publish them as a list and make them a part of a rule. This is that rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has a hearing each year to review these fees and receive comment.

No written comments have been received within the past five years that have suggested any changes or complained about any of these fees.

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 because it is specifically required by law and because it allows for notification and comment from those affected by it every time it is changed. 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: 01/26/2007

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without Rule R590-114, letters of credit may not be of adequate quality to ensure the effectiveness of certain reinsurance agreements. The rule protects the ceding insurers security interest in reinsurance ceded by means of the letter of credit. This rule may also affect other areas of statutory accounting such as credit for reinsurance ceded. 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: 01/29/2007

Insurance, Administration
R590-114
Letters of Credit

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 29452
FILED: 01/29/2007, 11:12

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201, the department's general rulemaking authority section, allows the department to write rules to implement the provisions of the insurance code. Subsection 31A-17-404(3) provides for a rule to determine the form letters of credit are to take to be used as security to protect a ceding insurer in a transaction of reinsurance. This rule sets the standards and form for letters of credit.

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 by the department regarding this rule in the past five years.

Insurance, Administration
R590-123
Additions and Deletions of Designees
by Organizations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 29445
FILED: 01/27/2007, 19:26

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) provides general rulemaking authority authorizing the commissioner to write rules to enact the provisions of the insurance code. Subsection 31A-23-215(2), which is now Subsection 31A-23a-302(2) as a result of H.B. 374 (2003), authorizes the commissioner to write a rule setting the interval and form in which an agency is to report to the commissioner their new and terminated designees. The rule does this in Section R590-123-3. (DAR NOTE: H.B. 374 (2003) is found at Chapter 374, Laws of Utah 2003, and was effective 05/05/2003.)

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to continue in force to set the frequency, form, and procedure for filing information about persons designated or terminated to work for insurance agencies. This information is important for when complaints are made about an agent the department can pinpoint who is involved and who may be responsible. This rule helps keep track of who is working with whom, makes it easier to discern who may be involved and where records of transactions may be found. It also helps create a paper trail.

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: 01/27/2007



Insurance, Administration
R590-142
Continuing Education Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29444
FILED: 01/26/2007, 18:12

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-23-206 was moved to Section 31A-23a-202 in H.B. 374 passed in 2003. This change will be corrected in a nonsubstantive change after this filing is made. Section 31A-23a-202 give the department the authority to implement the provisions of this section dealing with continuing education requirements of licensed producers and consultants. Section 31A-26-206 gives the department the authority to prescribe by rule the continuing education (CE) requirements for the various

adjuster license classifications listed in Section 31A-26-204. The rule sets the standards by which a CE program is accepted; the Certificate of Completion is to be furnished to the attendee and the department; the situation which may cause the suspension of a provider's certification and how may be reinstated; how credit hours are allotted to speakers and lecturers in approved courses; and the penalties to those not complying with the provisions of this rule. (DAR NOTE: H.B. 374 (2003) is found at Chapter 374, Laws of Utah 2003, and was effective 05/05/2003.)

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department in the past five years regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is important because it specifies how CE courses are approved by the department. The rule also sets standards for the issuance and filing of the certificate for CE credit. This rule makes it clear the standards all licensees are required to meet in order to receive the CE hours required by the law. It also helps build the professionalism of those that work in the insurance industry and improves the accuracy of insurance information delivered to consumers. 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: 01/26/2007



Insurance, Administration
R590-143
Life and Health Reinsurance Agreements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29450
FILED: 01/29/2007, 10:48

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the general rulemaking provision of the code, Section 31A-2-201, which gives the commissioner the authority to write rules to implement the provisions of the insurance code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule in the past five years.

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 to prevent insurers from reducing a liability or increasing an asset when any of the listed provisions exist. This rule contains scenarios that should not exist relating to the Life and Health Reinsurance Agreements to assure transfer of risk. Risk transfer is essential if a large event (claim) should occur that would cause the insurer to make a monetary settlement beyond its surplus capacity. The contracts shall be written in a manner that assures the reinsurer is assuming the risk to prevent a significant drain of the insurer's surplus. 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: 01/29/2007



**Insurance, Administration
R590-147
Annual and Quarterly Statement Filing
Instructions**

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29449
FILED: 01/29/2007, 10:00

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201, the department's general rulemaking authority section, allows the department to write rules to implement the provisions of the insurance code. Section 31A-2-202 authorizes the commissioner to require statements, reports, and information to be delivered to the department or the National Association of Insurance Commissioners (NAIC) in a form specified by the commissioner. Section 31A-4-113 authorizes the commissioner to prescribe by rule the information to be submitted with and the form of the annual statement. The rule requires insurers to complete and file the NAIC's annual statement with the department along with other documents specified in the rule and law.

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 by the department regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: If this rule is not continued in force it may create confusion for insurers regarding their quarterly and annual reporting requirements for the NAIC and the Utah Insurance Department. Annual and quarterly statements may be filed incorrectly more frequently resulting in costly and unnecessary follow-ups by both insurers and the department. 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: 01/29/2007



**Insurance, Administration
R590-150
Commissioner's Acceptance of
Examination Reports**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**DAR FILE No.: 29454
FILED: 01/29/2007, 11:49**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201, the department's general rulemaking authority section, allows the department to write rules to implement the provisions of the insurance code. Subsection 31A-2-203(4) authorizes the commissioner to approve actuarial evaluations made by another insurance department. The rule supports this by defining standards that must be followed in preparing these examinations that would comply with National Association of Insurance Commissioner's (NAIC) accreditation standards.

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 or inquiries have been received by the department in the past five years regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: If Rule R590-150 were not continued in force, there could be confusion regarding which examination reports of other states or foreign insurers will be accepted in lieu of an examination performed by the Utah Insurance Department. This rule clearly defines which foreign exam reports will be accepted. Without this additional guidance, Utah may be required to participate in foreign exams, increasing costs to the state and to insurers. 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: 01/29/2007



Public Service Commission,
Administration
R746-348
Interconnection

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**DAR FILE No.: 29428
FILED: 01/22/2007, 12:15**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Commission may require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services in the same, adjacent, or overlapping services territory. These statutes (Sections 54-8B-2, 54-8B-2.2, and 54-4-12) require a commission rule for interconnection and that the commission set rules governing interconnection standards between companies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2003, Public Service Commission proposed a change to Section R746-348-7, to include "conduit, ducts, innerducts, rights of way, dirk fiber" to the definition of intra-premises cabling and inside wiring owned or controlled by a telecommunications corporation as essential facilities in specified circumstances. Comments on the proposed change were received from numerous building property owners or their representatives, all of whom commented in opposition to the proposed amendment. They claimed expansion of the essential facilities definition as proposed could result in other telecommunications companies gaining access to private property (whose control had been given to an individual telecommunications company) over the objections of the property's owners or developers. The commission decided not to make the proposed change. No other comments on the rule have been received during the last five year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Statutes requiring this rule and the need to regulate still remain in effect. Therefore, this rule should be continued.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sheri Bintz at the above address, by phone at 801-530-6714,
by FAX at 801-530-6796, or by Internet E-mail at
sbintz@utah.gov

AUTHORIZED BY: Sandy Mooy, Legal Counsel

EFFECTIVE: 01/22/2007



**Transportation, Motor Carrier, Ports of
Entry
R912-76
Single Tire Configuration**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29426
FILED: 01/19/2007, 13:28

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS
UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS
AUTHORIZE OR REQUIRE THE RULE: Sections 72-7-404 and 72-7-
406 call for the department to regulate weight of vehicles on
the highway and the configuration of tires. The department
has found that single tires cause more damage to pavement
than multiple tires; therefore, the department prohibits the use
of single tires in vehicles over a certain weight.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE
LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS
SUPPORTING OR OPPOSING THE RULE: The department has
received no comments on this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE,
INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS
IN OPPOSITION TO THE RULE, IF ANY: No engineering studies
have refuted the conclusion that single tires cause more
damage when combined with an overweight vehicle. The rule
has worked well in preventing damage and should continue.

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

TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY
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

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 01/19/2007



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF EXPIRED RULES

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

Natural Resources

Forestry, Fire and State Lands

No. 29433: **R652-140**. Utah Forest Practices Act.

ENACTED OR LAST REVIEWED: 01/22/2002 (No. 24251, NEW, filed 11/15/2001 at 3:17 p.m., published 12/01/2001)

EXPIRED: 01/23/2007

(DAR NOTE: See the proposed new rule filing for Rule R652-140 under DAR No. 29461 in this issue, February 15, 2007, of the Bulletin.)

End of the Notices of Expired Rules Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63-46a-4(9).

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Consumer Protection

No. 29238 (AMD): R152-23. Utah Health Spa Services.
Published: December 15, 2006
Effective: January 23, 2007

Real Estate

No. 29224 (AMD): R162-9. Continuing Education.
Published: December 1, 2006
Effective: January 17, 2007

No. 29237 (AMD): R162-202. Initial Application.
Published: December 15, 2006
Effective: January 24, 2007

Education

Administration

No. 29305 (NEW): R277-511. Highly Qualified Teacher Grants.
Published: December 15, 2006
Effective: January 23, 2007

No. 29306 (NEW): R277-512. Online Licensure.
Published: December 15, 2006
Effective: January 23, 2007

Environmental Quality

Solid and Hazardous Waste

No. 29202 (AMD): R315-301. Solid Waste Authority, Definitions, and General Requirements.
Published: December 1, 2006
Effective: February 1, 2007

No. 29203 (AMD): R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
Published: December 1, 2006
Effective: February 1, 2007

No. 29204 (AMD): R315-303. Landfilling Standards.
Published: December 1, 2006
Effective: February 1, 2007

No. 29205 (AMD): R315-304. Industrial Solid Waste Landfill Requirements.
Published: December 1, 2006
Effective: February 1, 2007

No. 29206 (AMD): R315-305-4. General Requirements.
Published: December 1, 2006
Effective: February 1, 2007

No. 29207 (AMD): R315-306-2. Requirements for Large Incinerators.
Published: December 1, 2006
Effective: February 1, 2007

No. 29208 (AMD): R315-308. Ground Water Monitoring Requirements.
Published: December 1, 2006
Effective: February 1, 2007

No. 29209 (AMD): R315-309. Financial Assurance.
Published: December 1, 2006
Effective: February 1, 2007

No. 29210 (AMD): R315-310. Permit Requirements for Solid Waste Facilities.
Published: December 1, 2006
Effective: February 1, 2007

No. 29211 (AMD): R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.
Published: December 1, 2006
Effective: February 1, 2007

No. 29212 (AMD): R315-312. Recycling and Composting Facility Standards.
Published: December 1, 2006
Effective: February 1, 2007

No. 29213 (AMD): R315-313-2. Transfer Station Standards.
Published: December 1, 2006
Effective: February 1, 2007

No. 29214 (AMD): R315-314-3. Facility Standards for Piles Used for Storage and Treatment.
Published: December 1, 2006
Effective: February 1, 2007

No. 29215 (AMD): R315-316. Infectious Waste Requirements.
Published: December 1, 2006
Effective: February 1, 2007

No. 29216 (AMD): R315-317. Other Processes, Variances, and Violations.
Published: December 1, 2006
Effective: February 1, 2007

No. 29217 (AMD): R315-318-1. General Requirements.
Published: December 1, 2006
Effective: February 1, 2007

No. 29218 (AMD): R315-320. Waste Tire Transporter and Recycler Requirements.
Published: December 1, 2006
Effective: February 1, 2007

Water Quality

No. 29186 (AMD): R317-1-2. General Requirements.
Published: November 15, 2006
Effective: January 19, 2007

No. 29098 (AMD): R317-1-7. TMDLs.
Published: October 15, 2006
Effective: January 19, 2007

No. 29294 (AMD): R317-6. Ground Water Quality Protection.
Published: December 15, 2006
Effective: January 23, 2007

No. 29185 (AMD): R317-6-6. Implementation.
Published: November 15, 2006
Effective: January 19, 2007

No. 29296 (AMD): R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems.
Published: December 15, 2006
Effective: January 26, 2007

Financial Institutions

Credit Unions

No. 29173 (NEW): R337-10. Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions.
Published: November 15, 2006
Effective: January 22, 2007

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 29197 (NEW): R414-510. Intermediate Care Facility for Individuals with Mental Retardation Transition Program.
Published: December 1, 2006
Effective: January 17, 2007

Human Services

Substance Abuse and Mental Health

No. 29245 (AMD): R523-1-5. Fee for Service.
Published: December 15, 2006
Effective: January 30, 2007

No. 29246 (AMD): R523-20-2. Providers' Application for Funding - Fee Collection Policy.
Published: December 15, 2006
Effective: January 30, 2007

No. 28928 (AMD): R523-23. Alcohol Training and Education Seminar Rules of Administration.
Published: September 1, 2006
Effective: January 30, 2007

No. 28928 (CPR): R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.
Published: December 15, 2006
Effective: January 30, 2007

Insurance

Administration

No. 28767 (AMD): R590-220. Submission of Accident and Health Insurance Filings.
Published: June 15, 2006
Effective: January 22, 2007

No. 28767 (First CPR): R590-220. Submission of Accident and Health Insurance Filings.
Published: August 15, 2006
Effective: January 22, 2007

No. 28767 (Second CPR): R590-220. Submission of Accident and Health Insurance Filings.
Published: December 15, 2006
Effective: January 22, 2007

No. 29290 (AMD): R590-225-6. Filing Submission Requirements.
Published: December 15, 2006
Effective: January 22, 2007

Labor Commission

Occupational Safety and Health

No. 29282 (AMD): R614-1-4. Incorporation of Federal Standards.
Published: December 15, 2006
Effective: January 23, 2007

NOTICES OF RULE EFFECTIVE DATES

Workforce Services

Employment Development

No. 29300 (AMD): R986-200-246. Transitional Cash Assistance.

Published: December 15, 2006

Effective: February 1, 2007

No. 29301 (AMD): R986-700. Child Care Assistance.

Published: December 15, 2006

Effective: February 1, 2007

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2007, including notices of effective date received through February 1, 2007, the effective dates of which are no later than February 15, 2007. 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/>).

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
Administrative Services					
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	29424	5YR	01/17/2007	2007-4/55
<u>Fleet Operations</u>					
R27-5	Fleet Tracking	29457	5YR	01/29/2007	2007-4/55
<u>Records Committee</u>					
R35-2-2	Declining Requests for Hearings	29081	AMD	01/05/2007	2006-20/2
Agriculture and Food					
<u>Administration</u>					
R51-2	Administration Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	29405	5YR	01/11/2007	2007-3/56

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals.	29506	5YR	02/08/2007	Not Printed
R58-6	Poultry.	29504	5YR	02/08/2007	Not Printed
R58-18	Elk Farming.	29505	5YR	02/08/2007	Not Printed
R58-22	Equine Infectious Anemia (EIA).	29503	5YR	02/08/2007	Not Printed
<u>Plant Industry</u>					
R68-19	Compliance Procedures	29453	5YR	01/29/2007	2007-4/56
<u>Regulatory Services</u>					
R70-201	Compliance Procedures.	29492	5YR	02/02/2007	Not Printed
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing.	29507	5YR	02/08/2007	Not Printed
R70-350	Ice Cream and Frozen Dairy Foods Standards.	29499	5YR	02/05/2007	Not Printed
R70-360	Procedure for Obtaining a License to Test Milk for Payment.	29500	5YR	02/05/2007	Not Printed
Commerce					
<u>Consumer Protection</u>					
R152-11	Utah Consumer Sales Practices Act	29470	5YR	02/01/2007	2007-4/56
R152-23	Utah Health Spa Services	29238	AMD	01/23/2007	2006-24/3
<u>Occupational and Professional Licensing</u>					
R156-11a	Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rules	29013	CPR	01/11/2007	2006-23/87
R156-11a	Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rules	29013	AMD	01/11/2007	2006-19/5
R156-24a	Physical Therapist Practice Act Rules	29459	5YR	01/30/2007	2007-4/57
R156-26a	Certified Public Accountant Licensing Act Rules	29473	5YR	02/01/2007	2007-4/57
R156-28	Veterinary Practice Act Rules	29472	5YR	02/01/2007	2007-4/58
R156-41	Speech-Language Pathology and Audiology Licensing Act Rules	29471	5YR	02/01/2007	2007-4/59
R156-54	Radiology Technologist and Radiology Practical Technician Licensing Act Rules	29396	5YR	01/09/2007	2007-3/56
R156-56	Utah Uniform Building Standard Act Rules	29120	AMD	01/01/2007	2006-21/5
R156-56	Utah Uniform Building Standard Act Rules	29122	AMD	01/01/2007	2006-21/33
R156-56	Utah Uniform Building Standard Act Rules	29357	NSC	01/01/2007	Not Printed
R156-56-711	Statewide Amendments to the IRC	29075	AMD	01/01/2007	2006-20/13
R156-71	Naturopathic Physician Practice Act Rules	29394	5YR	01/08/2007	2007-3/57
R156-72	Acupuncture Licensing Act Rules	29395	5YR	01/09/2007	2007-3/57
R156-75	Genetic Counselor Licensing Act Rules	29397	5YR	01/09/2007	2007-3/58
<u>Real Estate</u>					
R162-9	Continuing Education	29224	AMD	01/17/2007	2006-23/3
R162-202	Initial Application	29237	AMD	01/24/2007	2006-24/4
Corrections					
<u>Administration</u>					
R251-305	Visiting at Community Correctional Centers	29462	5YR	01/31/2007	2007-4/59
R251-306	Sponsors in Community Correctional Centers	29463	5YR	01/31/2007	2007-4/60
R251-707	Legal Access	29464	5YR	01/31/2007	2007-4/60
R251-710	Search	29465	5YR	01/31/2007	2007-4/61

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Crime Victim Reparations					
<u>Administration</u>					
R270-1-26	Victim Services	29220	AMD	01/10/2007	2006-23/6
Education					
<u>Administration</u>					
R277-511	Highly Qualified Teacher Grants	29305	NEW	01/23/2007	2006-24/7
R277-512	Online Licensure	29306	NEW	01/23/2007	2006-24/9
R277-617	Authorization of Student Clubs and Organizations	29494	5YR	02/02/2007	Not Printed
R277-705	Secondary School Completion and Diplomas	29495	5YR	02/02/2007	Not Printed
R277-915	Work-based Learning Programs for Interns	29496	5YR	02/02/2007	Not Printed
Environmental Quality					
<u>Air Quality</u>					
R307-110-36	Section XXII, Interstate Transport	29227	AMD	02/09/2007	2006-23/7
R307-214-2	Part 63 Sources	29194	AMD	02/09/2007	2006-23/10
R307-328	Davis, Salt Lake, Utah, and Weber Counties and Ozone Nonattainment Areas: Gasoline Transfer and Storage	29005	AMD	01/16/2007	2006-19/43
R307-328-1	Purpose	29150	NSC	01/16/2007	Not Printed
R307-332	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Stage II Vapor Recovery Systems	29007	REP	01/16/2007	2006-19/46
R307-335	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Degreasing and Solvent Cleaning Operations	29008	AMD	01/16/2007	2006-19/49
R307-341	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Cutback Asphalt	29010	AMD	01/16/2007	2006-19/59
R307-342	Davis, Salt Lake, Utah, and Weber Counties and Ozone Nonattainment Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks	29011	AMD	01/16/2007	2006-19/60
<u>Drinking Water</u>					
R309-105-9	Minimum Water Pressure	29036	AMD	01/01/2007	2006-19/68
<u>Solid and Hazardous Waste</u>					
R315-301	Solid Waste Authority, Definitions, and General Requirements	29202	AMD	02/01/2007	2006-23/17
R315-302	Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements	29203	AMD	02/01/2007	2006-23/22
R315-303	Landfilling Standards	29204	AMD	02/01/2007	2006-23/28
R315-304	Industrial Solid Waste Landfill Requirements	29205	AMD	02/01/2007	2006-23/33
R315-305-4	General Requirements	29206	AMD	02/01/2007	2006-23/35
R315-306-2	Requirements for Large Incinerators	29207	AMD	02/01/2007	2006-23/37
R315-308	Ground Water Monitoring Requirements	29208	AMD	02/01/2007	2006-23/38
R315-309	Financial Assurance	29209	AMD	02/01/2007	2006-23/43
R315-310	Permit Requirements for Solid Waste Facilities	29210	AMD	02/01/2007	2006-23/46
R315-311	Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities	29211	AMD	02/01/2007	2006-23/50
R315-312	Recycling and Composting Facility Standards	29212	AMD	02/01/2007	2006-23/52
R315-313-2	Transfer Station Standards	29213	AMD	02/01/2007	2006-23/54

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R315-314-3	Facility Standards for Piles Used for Storage and Treatment	29214	AMD	02/01/2007	2006-23/56
R315-316	Infectious Waste Requirements	29215	AMD	02/01/2007	2006-23/58
R315-317	Other Processes, Variances, and Violations	29216	AMD	02/01/2007	2006-23/60
R315-318-1	General Requirements	29217	AMD	02/01/2007	2006-23/61
R315-320	Waste Tire Transporter and Recycler Requirements	29218	AMD	02/01/2007	2006-23/62
<u>Water Quality</u>					
R317-1-2	General Requirements	29186	AMD	01/19/2007	2006-22/21
R317-1-7	TMDLs	29098	AMD	01/19/2007	2006-20/54
R317-6	Ground Water Quality Protection	29294	AMD	01/23/2007	2006-24/23
R317-6-6	Implementation	29185	AMD	01/19/2007	2006-22/23
R317-11	Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems	29296	AMD	01/26/2007	2006-24/26
Financial Institutions					
<u>Credit Unions</u>					
R337-10	Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions	29173	NEW	01/22/2007	2006-22/25
R337-10	Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions	29352	NSC	01/22/2007	Not Printed
<u>Nondepository Lenders</u>					
R343-1	Rule Governing Form of Disclosures For Title Lenders, Who Are Under the Jurisdiction of the Department of Financial Institutions	29225	NEW	01/09/2007	2006-23/65
Health					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-4A	Outpatient Hospital Services: Payment of Triage Fee	29441	5YR	01/26/2007	2007-4/61
R414-7C	Alternative Remedies for Nursing Facilities	29442	5YR	01/26/2007	2007-4/62
R414-10	Physician Services	29435	5YR	01/26/2007	2007-4/62
R414-10A	Transplant Services Standards	29493	5YR	02/02/2007	Not Printed
R414-45	Personal Supervision by a Physician	29466	5YR	01/31/2007	2007-4/63
R414-510	Intermediate Care Facility for Individuals with Mental Retardation Transition Program	29197	NEW	01/17/2007	2006-23/66
Human Services					
<u>Administration</u>					
R495-810	Government Records Access and Management Act	29497	5YR	02/05/2007	Not Printed
R495-878	Department of Human Services Civil Rights Complaint Procedure.	29498	5YR	02/05/2007	Not Printed
<u>Child and Family Services</u>					
R512-10	Youth Advocate Program	29387	5YR	01/03/2007	2007-3/58
R512-43	Adoption Assistance	29388	5YR	01/03/2007	2007-3/59
R512-60	Children's Trust Account	29390	5YR	01/03/2007	2007-3/59
<u>Substance Abuse and Mental Health</u>					
R523-1-5	Fee for Service	29245	AMD	01/30/2007	2006-24/29
R523-20-2	Providers' Application for Funding - Fee Collection Policy	29246	AMD	01/30/2007	2006-24/31

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R523-23	Alcohol Training and Education Seminar Rules of Administration	28928	AMD	01/30/2007	2006-17/43
R523-23	On-Premise Alcohol Training and Education Seminar Rules of Administration	28928	CPR	01/30/2007	2006-24/43
<u>Recovery Services</u>					
R527-5	Release of Information	29415	5YR	01/16/2007	2007-3/60
R527-34	Non-IV-A Services	29416	5YR	01/16/2007	2007-3/61
R527-35	Non-IV-A Fee Schedule	29417	5YR	01/16/2007	2007-3/61
R527-201	Medical Support Services	29418	5YR	01/16/2007	2007-3/62
Insurance					
<u>Administration</u>					
R590-70	Insurance Holding Companies	29451	5YR	01/29/2007	2007-4/63
R590-95	Rule to Permit the Same Minimum Nonforfeiture Standards for Men and Women Insureds Under the 1980 CSO and 1980 CET Mortality Tables	29447	5YR	01/27/2007	2007-4/64
R590-99	Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices	29446	5YR	01/27/2007	2007-4/64
R590-102	Insurance Department Fee Payment Rule	29443	5YR	01/26/2007	2007-4/65
R590-103	Security Deposits	29406	5YR	01/11/2007	2007-3/62
R590-114	Letters of Credit	29452	5YR	01/29/2007	2007-4/65
R590-121	Rate Modification Plan Rule	29403	5YR	01/11/2007	2007-3/63
R590-123	Additions and Deletions of Designees by Organizations	29445	5YR	01/27/2007	2007-4/66
R590-126	Accident and Health Insurance Standards	29404	5YR	01/11/2007	2007-3/63
R590-133	Variable Contracts	29411	5YR	01/12/2007	2007-3/64
R590-142	Continuing Education Rule	29444	5YR	01/26/2007	2007-4/67
R590-143	Life and Health Reinsurance Agreements	29450	5YR	01/29/2007	2007-4/67
R590-147	Annual and Quarterly Statement Filing Instructions	29449	5YR	01/29/2007	2007-4/68
R590-150	Commissioner's Acceptance of Examination Reports	29454	5YR	01/29/2007	2007-4/68
R590-176	Health Benefit Plan Enrollment	29400	5YR	01/11/2007	2007-3/65
R590-181	Yankee Bond Rule	29407	5YR	01/11/2007	2007-3/65
R590-182	Risk Based Capital Instructions	29410	5YR	01/12/2007	2007-3/66
R590-220	Submission of Accident and Health Insurance Filings	28767	CPR	01/22/2007	2006-16/30
R590-220	Submission of Accident and Health Insurance Filings	28767	AMD	01/22/2007	2006-12/27
R590-220	Submission of Accident and Health Insurance Filings	28767	CPR	01/22/2007	2006-24/44
R590-225-6	Filing Submission Requirements	29290	AMD	01/22/2007	2006-24/32
Labor Commission					
<u>Industrial Accidents</u>					
R612-4-2	Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund	29124	AMD	01/01/2007	2006-21/49
<u>Occupational Safety and Health</u>					
R614-1-4	Incorporation of Federal Standards	29282	AMD	01/23/2007	2006-24/33
<u>Safety</u>					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	29313	AMD	02/08/2007	2007-1/24

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Money Management Council					
<u>Administration</u>					
R628-17	Limitations on Commercial Paper and Corporate Notes	29222	NEW	01/09/2007	2006-23/68
Natural Resources					
<u>Parks and Recreation</u>					
R651-634-1	User Permits and Fees	29163	AMD	01/02/2007	2006-22/39
<u>Forestry, Fire and State Lands</u>					
R652-122-300	Minimum Standards for Wildland Fire Training	29170	AMD	01/03/2007	2006-22/40
R652-140	Utah Forest Practices Act (EXPIRED RULE)	29433	NSC	01/23/2007	Not Printed
<u>Wildlife Resources</u>					
R657-5	Taking Big Game	29351	AMD	02/07/2007	2007-1/25
R657-17-3	Lifetime License Entitlement	29328	AMD	02/07/2007	2007-1/34
R657-20	Falconry	29398	5YR	01/10/2007	2007-3/66
R657-38	Dedicated Hunter Program	29329	AMD	02/07/2007	2007-1/35
R657-41-2	Definitions	29201	AMD	01/09/2007	2006-23/69
R657-42	Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents	29330	AMD	02/07/2007	2007-1/37
R657-49	Big Game Conservation Easements on Former School Trust Lands (5YR EXTENSION)	29165	NSC	02/07/2007	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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	29150	R307-328-1	NSC	01/16/2007	Not Printed
	29007	R307-332	REP	01/16/2007	2006-19/46
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