

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Commerce Occupational and Professional Licensing

Public Notice of 2011 Board and Committee Meeting Schedule

NOTE: Meetings are subject to change, contact the Division at 801-530-6628 to confirm meetings. Most meetings are held in the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

January

- 4, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 5, Plumbers Licensing Board, 9:00 a.m.
- 5, Utah Board of Accountancy, 1:30 p.m.
- 6, Alarm System Security and Licensing Board, 9:00 a.m.
- 6, Radiology Technologist Licensing Board, 1:00 p.m.
- 11, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.
- 12, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 12, Physicians Licensing Board, 9:00 a.m.
- 13, Nursing Education Peer Committee, 7:30 a.m.
- 13, Chiropractic Physician Licensing Board, 9:00 a.m.
- 13, Nursing Board, 9:30 a.m.
- 18, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 18, Psychologist Board, 9:00 a.m.
- 18, Board of Massage Therapy, 9:00 a.m.
- 18, UBCC Education Advisory Committee, 1:00 p.m.
- 19, Speech-Language Pathology and Audiology Licensing Board, 9:00 a.m.
- 19, Professional Engineers and Professional Land Surveyors Licensing Board, 9:00 a.m.
- 20, Osteopathic Physician and Surgeon's Licensing Board, 9:00 a.m.
- 20, Electricians Licensing Board, 9:00 a.m.
- 20, Contract Security Education Peer Committee, 10:00 a.m.
- 25, Utah State Board of Pharmacy, 8:00 a.m.
- 26, Substance Abuse Counselor Licensing Board, 9:00 a.m.
- 26, Construction Services Commission, 9:00 a.m.
- 31, Acupuncture Licensing Board, 9:00 a.m.

February

- 1, Occupational Therapy Board, 9:00 a.m.
- 2, Plumbers Licensing Board, 9:00 a.m.
- 2, Utah Board of Accountancy, 1:30 p.m.
- 3, Veterinary Board, 9:00 a.m.
- 3, Social Worker Licensing Board, 9:00 a.m.
- 9, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 9, Physicians Licensing Board, 9:00 a.m.
- 9, Architects Licensing Board, 9:00 a.m.
- 9, Optometrist Licensing Board, 9:00 a.m.
- 9, Uniform Building Code Commission, 9:00 a.m.
- 10, Nursing Education Peer Committee, 7:30 a.m.
- 10, Security Services Licensing Board, 9:00 a.m.
- 10, Nursing Board, 9:30 a.m.
- 10, Professional Geologist Licensing Board, 9:00 a.m.
- 15, UBCC Education Advisory Committee, 1:00 p.m.
- 16, Board of Funeral Service, 9:00 a.m.
- 17, Electricians Licensing Board, 9:00 a.m.
- 22, Utah State Board of Pharmacy, 8:00 a.m.
- 22, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 22, Physical Therapy Licensing Board, 9:00 a.m.
- 22, Health Facility Administrators Licensing Board, 9:00 a.m.

EDITOR'S NOTES

- 23, Construction Services Commission, 9:00 a.m.
- 24, Controlled Substance Precursor Advisory Board, 2:00 p.m.

March

- 1, Unified Code Analysis Council, 9:00 a.m.
- 1, UBCC Architectural Advisory Committee, 1:00 p.m.
- 2, Plumbers Licensing Board, 9:00 a.m.
- 2, Utah Board of Accountancy, 1:30 p.m.
- 3, Alarm System Security and Licensing Board, 9:00 a.m.
- 3, UBCC Plumbing/Health Advisory Committee, 9:00 a.m.
- 3, UBCC Structural Advisory Committee, 1:00 p.m.
- 7, Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 8, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 9, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 9, Physicians Licensing Board, 9:00 a.m.
- 9, Uniform Building Code Commission, 9:00 a.m.
- 10, Nursing Education Peer Committee, 7:30 a.m.
- 10, Nursing Board, 9:30 a.m.
- 10, Marriage and Family Therapist Licensing Board, 9:00 a.m.
- 10, UBCC Electrical Advisory Committee, 1:00 p.m.
- 14, Physician Assistant Licensing Board, 9:00 a.m.
- 15, Professional Counselors Licensing Board, 9:00 a.m.
- 15, Board of Massage Therapy, 9:00 a.m.
- 15, Building Inspector Licensing Board, 10:00 a.m.
- 15, UBCC Education Advisory Committee, 1:00 p.m.
- 16, Professional Engineers and Professional Land Surveyors Licensing Board, 9:00 a.m.
- 16, Deception Detection Examiners Board, 1:00 p.m.
- 17, Genetic Counselor Licensing Board, 9:00 a.m.
- 17, Electricians Licensing Board, 9:00 a.m.
- 17, Dentist and Dental Hygienist Licensing Board, 1:30 p.m.
- 22, Utah State Board of Pharmacy, 8:00 a.m.
- 22, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 22, Respiratory Care Licensing Board, 9:00 a.m.
- 23, Vocational Rehabilitation Counselor Licensing Board, 9:00 a.m.
- 30, Construction Services Commission, 9:00 a.m.

April

- 5, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 5, Physical Therapy Licensing Board, 9:00 a.m.
- 5, Unified Code Analysis Council, 9:00 a.m.
- 5, UBCC Architectural Advisory Committee, 1:00 p.m.
- 6, Plumbers Licensing Board, 9:00 a.m.
- 6, Utah Board of Accountancy, 1:30 p.m.
- 7, Social Worker Licensing Board, 9:00 a.m.
- 7, UBCC Plumbing/Health Advisory Committee, 9:00 a.m.
- 7, UBCC Structural Advisory Committee, 1:00 p.m.
- 7, Radiology Technologist Licensing Board, 1:00 p.m.
- 12, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 13, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 13, Physicians Licensing Board, 9:00 a.m.
- 13, Uniform Building Code Commission, 9:00 a.m.
- 14, Nursing Education Peer Committee, 7:30 a.m.
- 14, Security Services Licensing Board, 9:00 a.m.
- 14, Chiropractic Physician Licensing Board, 9:00 a.m.
- 14, Nursing Board, 9:30 a.m.
- 14, UBCC Electrical Advisory Committee, 1:00 p.m.
- 18, Recreational Therapy Board, 9:00 a.m.
- 19, UBCC Education Advisory Committee, 1:00 p.m.
- 19, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.

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- 20, Architects Licensing Board, 9:00 a.m.
 - 20, Landscape Architects Licensing Board, 1:00 p.m.
 - 21, Osteopathic Physician and Surgeon's Licensing Board, 9:00 a.m.
 - 21, Electricians Licensing Board, 9:00 a.m.
 - 21, Naturopathic Physician Licensing Board, 9:00 a.m.
 - 21, Licensed Direct-Entry Midwife Board, 1:30 p.m.
 - 26, Utah State Board of Pharmacy, 8:00 a.m.
 - 26, Psychologist Board, 9:00 a.m.
 - 27, Substance Abuse Counselor Licensing Board, 9:00 a.m.
 - 27, Construction Services Commission, 9:00 a.m.
 - 28, Certified Court Reporters Licensing Board, 2:00 p.m.

May

- 3, Unified Code Analysis Council, 9:00 a.m.
- 3, UBCC Architectural Advisory Committee, 1:00 p.m.
- 4, Plumbers Licensing Board, 9:00 a.m.
- 4, Utah Board of Accountancy, 1:30 p.m.
- 5, Alarm System Security and Licensing Board, 9:00 a.m.
- 5, UBCC Plumbing/Health Advisory Committee, 9:00 a.m.
- 5, UBCC Structural Advisory Committee, 1:00 p.m.
- 10, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 11, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 11, Alternative Dispute Resolution Providers Certification Board, 9:00 a.m.
- 11, Dietitian Board, 9:00 a.m.
- 11, Uniform Building Code Commission, 9:00 a.m.
- 12, Nursing Education Peer Committee, 7:30 a.m.
- 12, Nursing Board, 9:30 a.m.
- 12, UBCC Electrical Advisory Committee, 1:00 p.m.
- 17, Board of Massage Therapy, 9:00 a.m.
- 17, UBCC Education Advisory Committee, 1:00 p.m.
- 18, Board of Funeral Service, 9:00 a.m.
- 18, Professional Engineers and Professional Land Surveyors Licensing Board, 9:00 a.m.
- 18, Physicians Licensing Board, 9:00 a.m.
- 19, Podiatric Physician Board, 9:00 a.m.
- 19, Electricians Licensing Board, 9:00 a.m.
- 24, Utah State Board of Pharmacy, 8:00 a.m.
- 25, Construction Services Commission, 9:00 a.m.
- 26, Contract Security Education Peer Committee, 10:00 a.m.

June

- 1, Plumbers Licensing Board, 9:00 a.m.
- 1, Utah Board of Accountancy, 1:30 p.m.
- 2, Veterinary Board, 9:00 a.m.
- 2, Social Worker Licensing Board, 9:00 a.m.
- 2, UBCC Plumbing/Health Advisory Committee, 9:00 a.m.
- 2, UBCC Structural Advisory Committee, 1:00 p.m.
- 6, Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 7, Unified Code Analysis Council, 9:00 a.m.
- 7, UBCC Architectural Advisory Committee, 1:00 p.m.
- 7, Occupational Therapy Board, 9:00 a.m.
- 7, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 8, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 8, Architects Licensing Board, 9:00 a.m.
- 8, Physicians Licensing Board, 9:00 a.m.
- 8, Uniform Building Code Commission, 9:00 a.m.
- 9, Nursing Education Peer Committee, 7:30 a.m.
- 9, Marriage and Family Therapist Licensing Board, 9:00 a.m.
- 9, Security Services Licensing Board, 9:00 a.m.
- 9, Nursing Board, 9:30 a.m.

- 9, UBCC Electrical Advisory Committee, 1:00 p.m.
- 14, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 15, Environmental Health Scientist Board, 9:00 a.m.
- 16, Professional Geologist Licensing Board, 9:00 a.m.
- 16, Electricians Licensing Board, 9:00 a.m.
- 16, Private Probation Provider Licensing Board, 10:00 a.m.
- 16, Dentist and Dental Hygienist Licensing Board, 1:30 p.m.
- 21, Respiratory Care Licensing Board, 9:00 a.m.
- 21, Professional Counselors Licensing Board, 9:00 a.m.
- 21, Building Inspector Licensing Board, 10:00 a.m.
- 21, UBCC Education Advisory Committee, 1:00 p.m.
- 23, Athletic Trainers Licensing Board, 9:00 a.m.
- 27, Physician Assistant Licensing Board, 9:00 a.m.
- 28, Utah State Board of Pharmacy, 8:00 a.m.
- 29, Vocational Rehabilitation Counselor Licensing Board, 9:00 a.m.
- 29, Construction Services Commission, 9:00 a.m.

July

- 5, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 5, Unified Code Analysis Council, 9:00 a.m.
- 5, UBCC Architectural Advisory Committee, 1:00 p.m.
- 6, Plumbers Licensing Board, 9:00 a.m.
- 6, Utah Board of Accountancy, 1:30 p.m.
- 7, Alarm System Security and Licensing Board, 9:00 a.m.
- 7, UBCC Plumbing/Health Advisory Committee, 9:00 a.m.
- 7, UBCC Structural Advisory Committee, 1:00 p.m.
- 7, Radiology Technologist Licensing Board, 1:00 p.m.
- 12, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 13, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 13, Physicians Licensing Board, 9:00 a.m.
- 13, Uniform Building Code Commission, 9:00 a.m.
- 14, Nursing Education Peer Committee, 7:30 a.m.
- 14, Chiropractic Physician Licensing Board, 9:00 a.m.
- 14, Nursing Board, 9:30 a.m.
- 14, UBCC Electrical Advisory Committee, 1:00 p.m.
- 19, Psychologist Board, 9:00 a.m.
- 19, Board of Massage Therapy, 9:00 a.m.
- 19, UBCC Education Advisory Committee, 1:00 p.m.
- 20, Professional Engineers and Professional Land Surveyors Licensing Board, 9:00 a.m.
- 20, Speech-Language Pathology and Audiology Licensing Board, 9:00 a.m.
- 21, Osteopathic Physician and Surgeon's Licensing Board, 9:00 a.m.
- 21, Electricians Licensing Board, 9:00 a.m.
- 21, Contract Security Education Peer Committee, 10:00 a.m.
- 26, Utah State Board of Pharmacy, 8:00 a.m.
- 27, Substance Abuse Counselor Licensing Board, 9:00 a.m.
- 27, Construction Services Commission, 9:00 a.m.

August

- 1, Acupuncture Licensing Board, 9:00 a.m.
- 2, Unified Code Analysis Council, 9:00 a.m.
- 2, UBCC Architectural Advisory Committee, 1:00 p.m.
- 3, Plumbers Licensing Board, 9:00 a.m.
- 3, Utah Board of Accountancy, 1:30 p.m.
- 4, Social Worker Licensing Board, 9:00 a.m.
- 4, UBCC Plumbing/Health Advisory Committee, 9:00 a.m.
- 4, UBCC Structural Advisory Committee, 1:00 p.m.
- 9, Optometrist Licensing Board, 9:00 a.m.
- 9, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 10, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.

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- 10, Architects Licensing Board, 9:00 a.m.
 - 10, Physicians Licensing Board, 9:00 a.m.
 - 10, Uniform Building Code Commission, 9:00 a.m.
 - 11, Nursing Education Peer Committee, 7:30 a.m.
 - 11, Security Services Licensing Board, 9:00 a.m.
 - 11, Nursing Board, 9:30 a.m.
 - 11, UBCC Electrical Advisory Committee, 1:00 p.m.
 - 16, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.
 - 16, UBCC Education Advisory Committee, 1:00 p.m.
 - 16, Physical Therapy Licensing Board, 9:00 a.m.
 - 17, Board of Funeral Service, 9:00 a.m.
 - 18, Electricians Licensing Board, 9:00 a.m.
 - 23, Utah State Board of Pharmacy, 8:00 a.m.
 - 23, Health Facility Administrators Licensing Board, 9:00 a.m.
 - 31, Construction Services Commission, 9:00 a.m.

September

- 1, Alarm System Security and Licensing Board, 9:00 a.m.
- 1, UBCC Plumbing/Health Advisory Committee, 9:00 a.m.
- 1, UBCC Structural Advisory Committee, 1:00 p.m.
- 6, Unified Code Analysis Council, 9:00 a.m.
- 6, UBCC Architectural Advisory Committee, 1:00 p.m.
- 7, Plumbers Licensing Board, 9:00 a.m.
- 7, Utah Board of Accountancy, 1:30 p.m.
- 8, Nursing Education Peer Committee, 7:30 a.m.
- 8, Veterinary Board, 9:00 a.m.
- 8, Nursing Board, 9:30 a.m.
- 8, Marriage and Family Therapist Licensing Board, 9:00 a.m.
- 8, Dentist and Dental Hygienist Licensing Board, 1:30 p.m.
- 8, UBCC Electrical Advisory Committee, 1:00 p.m.
- 12, Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 13, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 14, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 14, Alternative Dispute Resolution Providers Certification Board, 9:00 a.m.
- 14, Vocational Rehabilitation Counselor Licensing Board, 9:00 a.m.
- 14, Physicians Licensing Board, 9:00 a.m.
- 14, Uniform Building Code Commission, 9:00 a.m.
- 15, Electricians Licensing Board, 9:00 a.m.
- 20, Respiratory Care Licensing Board, 9:00 a.m.
- 20, Professional Counselors Licensing Board, 9:00 a.m.
- 20, Board of Massage Therapy, 9:00 a.m.
- 20, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 20, Building Inspector Licensing Board, 10:00 a.m.
- 20, UBCC Education Advisory Committee, 1:00 p.m.
- 21, Professional Engineers and Professional Land Surveyors Licensing Board, 9:00 a.m.
- 21, Deception Detection Examiners Board, 1:00 p.m.
- 26, Physician Assistant Licensing Board, 9:00 a.m.
- 27, Utah State Board of Pharmacy, 8:00 a.m.
- 28, Construction Services Commission, 9:00 a.m.

October

- 4, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 4, Occupational Therapy Board, 9:00 a.m.
- 5, Plumbers Licensing Board, 9:00 a.m.
- 5, Utah Board of Accountancy, 1:30 p.m.
- 6, Social Worker Licensing Board, 9:00 a.m.
- 6, Osteopathic Physician and Surgeon's Licensing Board, 9:00 a.m.
- 6, Radiology Technologist Licensing Board, 1:00 p.m.
- 12, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.

- 12, Architects Licensing Board, 9:00 a.m.
- 12, Physicians Licensing Board, 9:00 a.m.
- 12, Uniform Building Code Commission, 9:00 a.m.
- 12, Landscape Architects Licensing Board, 1:00 p.m.
- 13, Nursing Education Peer Committee, 7:30 a.m.
- 13, Security Services Licensing Board, 9:00 a.m.
- 13, Professional Geologist Licensing Board, 9:00 a.m.
- 13, Chiropractic Physician Licensing Board, 9:00 a.m.
- 13, Nursing Board, 9:30 a.m.
- 17, Recreational Therapy Board, 9:00 a.m.
- 18, UBCC Education Advisory Committee, 1:00 p.m.
- 19, Physician Assistant Licensing Board, 9:00 a.m.
- 20, Athletic Trainers Licensing Board, 9:00 a.m.
- 20, Naturopathic Physician Licensing Board, 9:00 a.m.
- 20, Electricians Licensing Board, 9:00 a.m.
- 20, Licensed Direct-Entry Midwife Board, 1:30 p.m.
- 25, Utah State Board of Pharmacy, 8:00 a.m.
- 25, Psychologist Board, 9:00 a.m.
- 26, Substance Abuse Counselor Licensing Board, 9:00 a.m.
- 26, Construction Services Commission, 9:00 a.m.
- 27, Certified Court Reporters Licensing Board, 2:00 p.m.

November

- 2, Plumbers Licensing Board, 9:00 a.m.
- 2, Utah Board of Accountancy, 1:30 p.m.
- 3, Alarm System Security and Licensing Board, 9:00 a.m.
- 9, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 9, Physicians Licensing Board, 9:00 a.m.
- 9, Uniform Building Code Commission, 9:00 a.m.
- 10, Nursing Education Peer Committee, 7:30 a.m.
- 10, Nursing Board, 9:30 a.m.
- 15, Board of Massage Therapy, 9:00 a.m.
- 15, UBCC Education Advisory Committee, 1:00 p.m.
- 16, Board of Funeral Service, 9:00 a.m.
- 16, Professional Engineers and Professional Land Surveyors Licensing Board, 9:00 a.m.
- 17, Electricians Licensing Board, 9:00 a.m.
- 23, Contract Security Education Peer Committee, 10:00 a.m.
- 30, Construction Services Commission, 9:00 a.m.

December

- 5, Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 6, Physical Therapy Licensing Board, 9:00 a.m.
- 6, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 7, Plumbers Licensing Board, 9:00 a.m.
- 7, Utah Board of Accountancy, 1:30 p.m.
- 8, Nursing Education Peer Committee, 7:30 a.m.
- 8, Security Services Licensing Board, 9:00 a.m.
- 8, Social Worker Licensing Board, 9:00 a.m.
- 8, Nursing Board, 9:30 a.m.
- 8, Dentist and Dental Hygienist Licensing Board, 1:30 p.m.
- 14, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 14, Physicians Licensing Board, 9:00 a.m.
- 14, Architects Licensing Board, 9:00 a.m.
- 14, Uniform Building Code Commission, 9:00 a.m.
- 15, Marriage and Family Therapist Licensing Board, 9:00 a.m.
- 15, Electricians Licensing Board, 9:00 a.m.
- 15, Private Probation Provider Licensing Board, 10:00 a.m.
- 17, Podiatric Physician Board, 9:00 a.m.
- 20, Utah State Board of Pharmacy, 8:00 a.m.

20, Professional Counselors Licensing Board, 9:00 a.m.
20, Building Inspector Licensing Board, 10:00 a.m.
20, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.
20, UBCC Education Advisory Committee, 1:00 p.m.
21, Vocational Rehabilitation Counselor Licensing Board, 9:00 a.m.
28, Construction Services Commission, 9:00 a.m.

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for December 2010 Medicaid Rate Changes

Effective December 1, 2010, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between October 16, 2010, 12:00 a.m., and November 01, 2010, 11:59 p.m. are included in this, the November 15, 2010 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 December 15, 2010. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through March 15, 2011, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

PROPOSED RULES are governed by Section 63G-3-301; Rule R15-2; and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Commerce, Real Estate
R162-1
Authority and Definitions

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 34194
FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.
- ◆ LOCAL GOVERNMENTS: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.
- ◆ SMALL BUSINESSES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions are contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
REAL ESTATE
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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~[R162-1. Authority and Definitions.~~

~~R162-1-1. Authority.~~

~~1.1. The following administrative Rules, applicable to the Division of Real Estate, Department of Commerce have been established under the authority granted by Section 61-2-5.5, et seq.~~

~~1.1.1. The Division shall charge and collect fees for the (a) issuance of a new or duplicate license; (b) issuance of license history or certifications; (c) issuance of certified copies of official documents, orders, and other papers and transcripts; (d) certification of real estate schools, courses and instructors; and (e) costs of administering other duties.~~

~~1.1.2. The authority to collect the above fees is authorized by Section 61-2-9(5) and Section 61-2a-4.~~

~~R162-1-2. Definitions.~~

~~1.2. Terms used in these rules are defined as follows:~~

~~1.2.1. Active Licensee: One who: (a) has paid all applicable license fees; and (b) is affiliated with a principal brokerage.~~

~~1.2.2. Branch Manager: An associate broker who manages a branch office under the supervision of the principal broker.~~

~~1.2.3. Branch Office: A real estate office affiliated with and operating under the same name as a Principal Brokerage but located at an address different from the main office.~~

~~1.2.4. Business Opportunity: The sale, lease, or exchange of any business which includes an interest in real estate.~~

~~1.2.5. Brokerage: A real estate sales brokerage or a property management company.~~

~~1.2.6. Certification: The authorization issued by the Division to: (a) establish and operate a real estate school which provides courses approved for licensing requirements, (b) provide courses approved for renewal requirements, or (c) function as a real estate instructor.~~

~~1.2.7. Company Registration: A Registration issued to a~~

corporation, partnership, Limited Liability Company, association or other legal entity of a real estate brokerage. A Company Registration is also issued to an individual or an individual's professional corporation.

1.2.8. Continuing Education: Professional education required as a condition of renewal in accordance with Subsection 61-2-9(2)(a).

1.2.9. Credit hour: 50 minutes of instruction within a 60 minute period.

1.2.10 DBA (doing business as): The authority issued by the Division of Corporations and Commercial Code to transact business under an assumed name.

1.2.11. Distance Education: education in which the instruction does not take place in a traditional classroom setting, but through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including computer conferencing, video conferencing, interactive audio, interactive computer software, Internet-based instruction, and other interactive online courses.

1.2.12. Expired License: A license will be deemed "expired" when the licensee fails to pay the fees due by the close of business on the expiration date. If the expiration date falls on a Saturday, Sunday or holiday the effective date of expiration shall be the next business day.

1.2.13. Inactivation: The placing of a license on an inactive status, either voluntarily or involuntarily.

1.2.13.1. Voluntary inactivation means the process initiated by an active licensee terminating affiliation with a principal brokerage.

1.2.13.2. Involuntary inactivation means the process of (a) inactivation of a sales agent or associate broker license resulting from the suspension, revocation, or non-renewal of the license of the licensee's principal broker, or death of the licensee's principal broker, or (b) inactivation of a sales agent or associate broker license by a principal broker when the licensee is unavailable to execute the transfer forms.

1.2.14. Inactive Licensee: One who: (a) has paid all applicable license fees; and (b) is not affiliated with a principal brokerage.

1.2.15. Net listing means a listing wherein the amount of real estate commission is the difference between the selling price of the property and a minimum price set by the seller.

1.2.16. Non-resident Licensee: A person who holds a Utah real estate principal broker, associate broker, or sales agent license whose primary residence is in a jurisdiction other than Utah.

1.2.17. Principal Brokerage: The main real estate or property management office of a principal broker.

1.2.18. Property Management: The business of providing services relating to the rental or leasing of real property, including: advertising, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, supervising repairs and maintenance, collecting and disbursing rents.

1.2.19. Provider: any person, professional organization, or other entity that is approved by the Division of Real Estate to teach Division approved continuing education courses.

1.2.20. Regular Salaried Employees: For purposes of this Chapter, "regular salaried employee" shall mean an individual

employed other than on a contract basis, who has withholding taxes taken out by the employer.

1.2.21. Reinstatement: To restore to active or inactive status, a license which has expired or been suspended.

1.2.22. Reissuance: The process by which a licensee may obtain a license following revocation.

1.2.23. Renewal: To extend an active or inactive license for an additional licensing period.

1.2.24. School: For the purposes of Rules R162-8 and R162-9, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized real estate organization, any Utah real estate organization, or any local real estate organization which has been approved by the Real Estate Commission; and

(d) Any proprietary real estate school.

1.2.25. Traditional Education: education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

KEY: real estate business, licensing

Date of Enactment or Last Substantive Amendment: May 30, 2007

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 61-2-5.5]

Commerce, Real Estate R162-2 Exam and License Application Requirements

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34195

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ LOCAL GOVERNMENTS: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ SMALL BUSINESSES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
REAL ESTATE
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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~[R162-2. Exam and License Application Requirements.~~

~~**R162-2-1. Qualifications for Licensure and Exam Application.**~~

~~2.1.1 Minimum Age. All applicants shall be at least 18 years of age.~~

~~2.1.2 Formal Education Minimum. All applicants shall have at least a high school diploma, G.E.D., or equivalent as determined by the Commission.~~

~~2.1.3 Prelicensing Education. All applicants shall have completed any required prelicensing education before applying to sit for a licensing examination.~~

~~2.1.4 Exam application. All applicants who desire to sit for a licensing examination shall deliver an application to sit for the examination, together with the applicable examination fee, to the testing service designated by the Division. If the applicant fails to take the examination when scheduled, the fee shall be forfeited.~~

~~2.1.4.1 Applicants previously licensed out-of-state.~~

~~(a) If an applicant is now and has been actively licensed for the preceding two years in another state which has substantially equivalent licensing requirements and is either a new resident or a non-resident of this state, the Division shall waive the national portion of the exam.~~

~~(b) If an applicant has been on an inactive status for any portion of the past two years the applicant may be required to take both the national and Utah state portions of the exam.~~

~~**R162-2-2. Licensing Procedure.**~~

~~2.2. Within 90 days after successful completion of the exam, the applicant shall return to the Division each of the following:~~

~~2.2.1. A report of the examination indicating that both portions of the exam have been passed within a six-month period of time.~~

~~2.2.2. The license application form required by the Division. The application form shall include the licensee's business and home address. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.~~

~~2.2.3. The non-refundable fees which include the appropriate license fee as authorized by Section 61-2-9(5) and the Recovery Fund fee as authorized by Section 61-2a-4.~~

~~2.2.4. Documentation indicating successful completion of the required education taken within the year prior to licensing. If the applicant has been previously licensed in another state which has substantially equivalent licensing requirements, the applicant may apply to the Division for a waiver of all or part of the educational requirement.~~

~~(a) Until December 31, 2009, a candidate for the license of sales agent shall successfully complete 90 classroom hours of approved study in principles and practices of real estate.~~

~~(b)(i) Beginning January 1, 2010, a candidate for the license of sales agent shall successfully complete 120 hours of approved study in principles and practices of real estate.~~

~~(ii) An applicant for licensure may complete 90 hours of prelicense education only if:~~

~~_____ (A) the applicant began the prelicense education program prior to January 1, 2010; and~~

~~_____ (B) the applicant submits the completed education prior to March 31, 2010;~~

~~_____ (c) Experience shall not satisfy the education requirement. Membership in the Utah State Bar shall waive this requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application.~~

~~_____ (d) Candidates for the license of associate broker or principal broker shall successfully complete 120 classroom hours of study curriculum approved by the Commission consisting of 45 hours of broker principles, 45 hours of broker practices, and 30 hours of Utah law and testing. Experience shall not satisfy the education requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application.~~

~~_____ 2.2.5. The principal broker and associate broker applicant shall submit the forms required by the Division documenting a minimum of three years licensed real estate experience and a total of at least 60 points accumulated within the five years prior to licensing. A minimum of two years (24 months) and at least 45 points shall be accumulated from Tables I and/or II. The remaining 15 points may be accumulated from Tables I, II or III.~~

TABLE I — REAL ESTATE TRANSACTIONS

~~RESIDENTIAL — points can be accumulated from either the selling or the listing side of a real estate closing:~~

(a) One unit dwelling	2.5 points
(b) Two to four unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points

~~COMMERCIAL~~

(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE II — PROPERTY MANAGEMENT

~~RESIDENTIAL~~

(a) Each unit managed	.25 pt/month
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~~COMMERCIAL — hotel/motel, industrial/warehouse, office, or retail building~~

(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month
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~~_____ 2.2.6. The Principal Broker may accumulate additional experience points by having participated in real estate related activities such as the following:~~

TABLE III — OPTIONAL

Real Estate Attorney	1 pt/month
CPA Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

~~_____ 2.2.7. If the review of an application has been performed by the Division and the Division has denied the application based on insufficient experience, and if the applicant believes that the Experience Points Tables do not adequately reflect the amount of the applicant's experience, the applicant may petition the Real Estate Commission for reevaluation by making a written request within 30 days after the denial stating specific grounds upon which relief is requested. The Commission shall thereafter consider the request and issue a written decision.~~

~~_____ 2.2.8. An applicant previously licensed in another state shall provide a written record of the applicant's license history from that state and documentation of disciplinary action, if any, against the applicant's license.~~

~~_____ 2.2.9. Qualifications of License Applicants. An applicant for a new license may not:~~

~~_____ (a) have been convicted of, entered a plea in abeyance to, or completed a sentence of confinement on account of a felony within five years preceding the application; or~~

~~_____ (b) have been convicted of or completed any sentence of confinement on account of a misdemeanor involving fraud, misrepresentation, theft, or dishonesty within the three-year period preceding the date of application.~~

~~_____ 2.2.10 Qualifications for Renewal. An applicant for license renewal, or for reinstatement of an expired license, may not have, since the last date of licensure:~~

~~_____ (a) been convicted of a felony;~~

~~_____ (b) entered into a plea in abeyance agreement relative to a felony charge involving fraud, misrepresentation, or deceit; or~~

~~_____ (c) had, with regard to activities requiring a real estate license, a finding of fraud, misrepresentation or deceit entered against the applicant by a court of competent jurisdiction or a government agency, unless the finding was explicitly considered by the Division in a previous application process.~~

~~_____ 2.2.11 Determining fitness for licensure. In determining whether an applicant who has not been disqualified by Subsections 2.2.9 or 2.2.10 meets the requirements of honesty, integrity, truthfulness, reputation and competency required for a new or a renewed license, the Commission and the Division will consider information they consider necessary to make this determination, including the following:~~

~~_____ 2.2.11.1. Whether an applicant has been denied a license to practice real estate, property management, or any regulated profession, business, or vocation, or whether any license has been suspended or revoked or subjected to any other disciplinary sanction by this or another jurisdiction;~~

~~_____ 2.2.11.2. Whether an applicant has been guilty of conduct or practices which would have been grounds for revocation or suspension of license under Utah law had the applicant then been licensed;~~

~~2.2.11.3. Whether a civil judgment has been entered against the applicant based on a real estate transaction, and whether the judgment has been fully satisfied;~~

~~2.2.11.4. Whether a civil judgment has been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied.~~

~~2.2.11.5. Whether an applicant has ever been convicted of, or entered a plea in abeyance to, any criminal offense, or whether any criminal charges against the applicant have ever been resolved by a diversion agreement or similar disposition;~~

~~2.2.11.6. Whether restitution ordered by a court in a criminal case has been fully satisfied;~~

~~2.2.11.7. Whether the parole or probation in a criminal case or the probation in a licensing action has been completed and fully served; and~~

~~2.2.11.8. Whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a license, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.~~

R162-2-3. Company Registration.

~~2.3.1. A Principal Broker shall register with the Division the name under which the principal broker's real estate brokerage or property management company will operate. Registration shall require payment of applicable non-refundable fees and evidence that the name of the new company has been approved by the Division of Corporations, Department of Commerce.~~

~~2.3.1.1. The real estate brokerage shall at all times have affiliated with it a principal broker who shall demonstrate that the principal broker is authorized to use the company name.~~

~~2.3.1.2. Misleading or deceptive business names. The Division shall not accept a proposed business name when there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with a licensed real estate brokerage or property management company.~~

~~2.3.2. Registration of Entities Operating a Principal Brokerage.~~

~~2.3.2.1. A corporation, partnership, Limited Liability Company, association or other entity which operates a principal brokerage shall comply with R162-2.3 and the following conditions:~~

~~2.3.2.2. Individuals associated with the entity shall not engage in activity which requires a real estate license unless they are affiliated with the principal broker and licensed with the Division. Upon a change of principal broker, the entity shall be responsible to insure that the outgoing and incoming principal brokers immediately provide to the Division, on forms required by the Division, evidence of the change.~~

~~2.3.2.2.1. If the outgoing principal broker is not available to properly execute the form required to effect the change of principal brokers, the change may still be made provided a letter advising of the change is mailed by the entity by certified mail to~~

~~the last known address of the outgoing principal broker. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form when it is submitted to the Division.~~

~~2.3.2.3. If the change of members in a partnership either by the addition or withdrawal of a partner creates a new legal entity, the new entity cannot operate under the authority of the registration of the previous partnership. The dissolution of a corporation, partnership, Limited Liability Company, association or other entity which has been registered terminates the registration. The Division shall be notified of any change in a partnership or dissolution of a corporation which has registered prior to the effective date of the change.~~

R162-2-4. Licensing of Non-Residents.

~~2.4. In addition to meeting the requirements of rules 2.1 and 2.2, an applicant living outside of the state of Utah may be issued a license in Utah by successfully completing specific educational hours required by the Division with the concurrence of the Commission, and by passing the real estate licensing examination. The applicant shall also meet each of the following requirements:~~

~~2.4.1. If the applicant is an associate broker or sales agent, the principal broker with whom the applicant will be affiliated shall hold an active license in Utah.~~

~~2.4.2. If the applicant is a principal broker, the applicant shall establish a real estate trust account in this state. The applicant shall also maintain all office records in this state at a principle business location as outlined in R162-4.1.~~

~~2.4.3. The application for licensure in Utah shall be accompanied by an irrevocable written consent allowing service of process on the Commission or the Division.~~

~~2.4.4. The applicant shall provide a written record of the applicant's license history, if any, and documentation of disciplinary action, if any, against the applicant's license.~~

R162-2-5. Reciprocity.

~~2.5. The Division, with the concurrence of the Commission, may enter into specific reciprocity agreements with other states on the same basis as Utah licensees are granted licenses by those states.~~

KEY: real estate business

Date of Enactment or Last Substantive Amendment: May 25, 2010

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 61-2-5.5]

Commerce, Real Estate R162-2f Real Estate Licensing and Practices Rules

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 34191

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to reorganize the existing real estate rules into a statutory numbering format and to update rules that, given online technologies, no longer track with general real estate business practices.

SUMMARY OF THE RULE OR CHANGE: In general, the substance of the existing real estate rules has been incorporated into this filing, with few changes. The numbering is changed to reflect the statutory outline numbering format. Rules governing how trust account records are to be maintained are updated to allow for electronic banking and record keeping. Rules governing how licensees will complete and submit renewal and status change forms are updated to require use of the real estate licensing and management system (RELMS) database in all but a few specific situations. (DAR NOTE: The following proposed repeals of Real Estate rules are in this issue, November 15, 2010, of the Bulletin under the following numbers: Rule R162-1, DAR No. 34194; Rule R162-2, DAR No. 34195; Rule R162-3, DAR No. 34196; Rule R162-4, DAR No. 34197; Rule R162-5, DAR No. 34198; Rule R162-6, DAR No. 34199; Rule R162-7, DAR No. 34200; Rule R162-8, DAR No. 34201; Rule R162-9, DAR No. 34202; Rule R162-10, DAR No. 34203; and Rule R162-11, DAR No. 34204.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2f-105 and Section 61-2f-307 and Subsection 61-2f-103(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Where the substance of the rules remains essentially the same, no meaningful cost or savings is anticipated to the state budget. Shifting to use of the RELMS database for license renewals and status changes will result in division staff having more time to provide quality customer service.

◆ **LOCAL GOVERNMENTS:** Local governments are not subject to the real estate rules, nor do they enforce them. As such, local governments will experience any fiscal impact from this filing.

◆ **SMALL BUSINESSES:** No new requirements are imposed on small businesses. The costs and fees of operating a real estate business remain the same as currently in effect. No fiscal impact to small businesses is anticipated from this filing.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No new requirements are imposed on affected persons. The costs and fees of obtaining a real estate license and working as a real estate professional remain the same as currently in effect. No fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance is required beyond that currently in effect. Therefore, no new compliance costs are anticipated for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing renumbers the Division rules to mirror the statutory numbering scheme, provides a general definition section, and simplifies existing licensing procedures and requirements. As indicated in the rule summary, there will be no impact to businesses as the rule filing contains the same substance as the old rules.

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

COMMERCE
REAL ESTATE
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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.**R162-2f. Real Estate Licensing and Practices Rules.****R162-2f-101. Title and Authority.**

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;
(e) radio;
(f) television;
(g) direct mail promotions;
(h) business cards;
(i) door hangers;
(j) signs; or
(k) any other medium.
(3) "Affiliate":
(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and
(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.
(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.
(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.
(6) "Brokerage" means a real estate sales or a property management company.
(7) "Brokerage record" means any record related to the business of a principal broker, including:
(a) record of an offer to purchase real estate;
(b) record of a real estate transaction, regardless of whether the transaction closed;
(c) licensing records;
(d) banking and other financial records;
(e) independent contractor agreements;
(f) trust account records; and
(g) records of the brokerage's contractual obligations.
(8) "Business day" is defined in Subsection 61-2f-102(3).
(9) "Certification" means authorization from the division to:
(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or
(b) function as an instructor for courses approved for prelicensing education or continuing education.
(10) "Commission" means the Utah Real Estate Commission.
(11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:
(a) core: topics identified in Subsection R162-2f-206c(5)(c); or
(b) elective: topics identified in Subsection R162-2f-206c(5)(e).
(12) "Day" means calendar day unless specified as "business day."
(13) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including:

(a) computer conferencing;
(b) satellite teleconferencing;
(c) interactive audio;
(d) interactive computer software;
(e) Internet-based instruction; and
(f) other interactive online courses.
(14) "Division" means the Utah Division of Real Estate.
(15) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.
(16) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:
(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or
(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.
(17) "Guaranteed sales plan" means:
(a) a plan in which a seller's real estate is guaranteed to be sold; or
(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:
(i) in the specified period of a listing; or
(ii) within some other specified period of time.
(18) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:
(a) voluntarily, with the assent of the license holder; or
(b) involuntarily, without the assent of the license holder.
(19) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.
(20) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:
(a) subject to the terms of a limited agency agreement; and
(b) with the informed consent of all principals to the transaction.
(21) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.
(22) "Nonresident applicant" means a person:
(a) whose primary residence is not in Utah; and
(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.
(23) "Principal brokerage" means the main real estate or property management office of a principal broker.
(24) "Principal" in a transaction means an individual who is represented by a licensee and may be:
(a) the buyer or lessee;

_____ (b) an individual having an ownership interest in the property;

_____ (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or

_____ (d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

_____ (25) "Property management" is defined in Subsection 61-2f-102(18).

_____ (26) "Registration" means authorization from the division to engage in the business of real estate as:

_____ (a) a corporation;

_____ (b) a partnership;

_____ (c) a limited liability company;

_____ (d) an association;

_____ (e) a dba;

_____ (f) a professional corporation;

_____ (g) a sole proprietorship; or

_____ (h) another legal entity of a real estate brokerage.

_____ (27) "Reinstatement" is defined in Subsection 61-2f-102(21).

_____ (28) "Reissuance" is defined in Subsection 61-2f-102(22).

_____ (29) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees can submit certain licensing information to the division.

_____ (30) "Renewal" is defined in Subsection 61-2f-102(23).

_____ (31) "School" means:

_____ (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

_____ (b) any community college or vocational-technical school;

_____ (c) any local real estate organization that has been approved by the commission as a school; or

_____ (d) any proprietary real estate school.

_____ (32) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

_____ (33) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

_____ (a) mortgage brokers;

_____ (b) mortgage lenders;

_____ (c) loan originators;

_____ (d) title service providers;

_____ (e) attorneys;

_____ (f) appraisers;

_____ (g) providers of document preparation services;

_____ (h) providers of credit reports;

_____ (i) property condition inspectors;

_____ (j) settlement agents;

_____ (k) real estate brokers;

_____ (l) marketing agents;

_____ (m) insurance providers; and

_____ (n) providers of any other services for which a principal or investor will be charged.

_____ (34) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

_____ (35) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(25).

R162-2f-105. Fees.

_____ Any fee collected by the division is nonrefundable.

R162-2f-201. Qualification for Licensure.

_____ (1) Character. Pursuant to Subsection 61-2f-203(1)(b), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

_____ (a) An applicant shall be denied a license for:

_____ (i) a felony that resulted in:

_____ (A) a conviction occurring within the five years preceding the date of application;

_____ (B) a plea agreement occurring within the five years preceding the date of application; or

_____ (C) a jail or prison term with a release date falling within the five years preceding the date of application; or

_____ (ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

_____ (A) a conviction occurring within the three years preceding the date of application; or

_____ (B) a jail or prison term with a release date falling within the three years preceding the date of application.

_____ (b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

_____ (i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);

_____ (ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

_____ (iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

_____ (iv) court findings of fraudulent or deceitful activity;

_____ (v) evidence of non-compliance with court orders or conditions of sentencing; and

_____ (vi) evidence of non-compliance with:

_____ (A) terms of a diversion agreement not yet closed and dismissed;

_____ (B) a probation agreement; or

_____ (C) a plea in abeyance.

_____ (2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:

_____ (a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;

_____ (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

_____ (c) suspension or revocation of a professional license;

_____ (d) sanctions placed on a professional license; and

_____ (e) investigations conducted by regulatory agencies relative to a professional license.

_____ (3) Age. An applicant shall be at least 18 years of age.

_____ (4) Minimum education. An applicant shall have:

_____ (a) a high school diploma;

_____ (b) a GED; or

_____ (c) equivalent education as approved by the commission.

R162-2f-202a. Sales Agent Licensing Fees and Procedures.

_____ (1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:

_____ (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

_____ (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

_____ (c)(i) successfully complete 120 hours of approved prelicensing education;

_____ (ii) evidence current membership in the Utah State Bar;

or

_____ (iii) apply to the division for waiver of all or part of the education requirement by virtue of:

_____ (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

_____ (B) completing other equivalent real estate education within the 12-month period prior to the date of application;

_____ (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

_____ (ii) pay a nonrefundable examination fee to the testing center;

_____ (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

_____ (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

_____ (i) documentation indicating successful completion of the required prelicensing education;

_____ (ii) a report of the examination showing a passing score for each component of the examination; and

_____ (iii) the applicant's business, home, and e-mail addresses;

_____ (g) if applying for an active license, affiliate with a principal broker; and

_____ (h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

_____ (2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:

_____ (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

_____ (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

_____ (c)(i) successfully complete 120 hours of approved prelicensing education;

_____ (ii) evidence current membership in the Utah State Bar;

or

_____ (iii) apply to the division for waiver of all or part of the education requirement by virtue of:

_____ (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;

_____ (B) completing other equivalent real estate education within the 12-month period prior to the date of application; or

_____ (C) having been licensed in a state that has substantially equivalent prelicensing education requirements;

_____ (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

_____ (ii) pay a nonrefundable examination fee to the testing center;

_____ (e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or

_____ (ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:

_____ (A) take and pass the state component of the licensing examination; and

_____ (B) apply to the division for a waiver of the national component of the licensing examination;

_____ (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

_____ (i) documentation indicating successful completion of the required prelicensing education;

_____ (ii) a report of the examination showing a passing score for each component of the examination; and

_____ (iii) the applicant's business, home, and e-mail addresses;

_____ (g) provide from any state where licensed:

_____ (i) a written record of the applicant's license history; and

_____ (ii) complete documentation of any disciplinary action taken against the applicant's license;

_____ (h) if applying for an active license, affiliate with a principal broker; and

_____ (i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

_____ (3) Deadlines.

_____ (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

_____ (i) within six months of the date on which the individual achieves a passing score on the passed component; and

_____ (ii) within 12 months of the date on which the individual completes the prelicensing education.

_____ (b) An application for licensure shall be submitted:

_____ (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

_____ (ii) within 12 months of the date on which the individual completes the prelicensing education.

_____ (c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

_____ (1) To obtain a Utah license to practice as a principal broker, an individual shall:

_____ (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) evidence the individual's having, within the five-year period preceding the date of application, a minimum of three years full-time experience as a real estate licensee, including at least two years experience selling, listing, or managing the following types of properties:

(A) one- to four-unit residential dwellings;

(B) apartments, 5 units or over;

(C) improved lots;

(D) vacant lands/subdivisions;

(E) hotels or motels;

(F) industrial or warehouse property;

(G) office buildings;

(H) retail buildings; or

(I) leases of commercial space; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 experience points as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish a trust account pursuant to Section R162-2f-403.

(2) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202c. Associate Broker Licensing Fees and Procedures.

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

R162-2f-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal.

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).

(c) In order to renew on time without incurring a late fee:

(i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and

(ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:

(A) by the license expiration date, if that date falls on a day when the division is open for business; or

(B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal.

(a) Character and competency.

(i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an individual shall complete:

(A) the 12-hour new sales agent course certified by the division; and

(B) an additional six non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum; and

(III) taken during the previous license period; or

(B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1) (a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):

(i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. As of January 1, 2011, an individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

(1) A principal broker shall not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate trust account in which funds received at the registered location will be deposited; and

(e) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that is likely to mislead the public into

thinking that the entity is not a real estate brokerage or property management company.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206a. Certification of Real Estate School.

(1) Prior to offering real estate prelicensing or continuing education, a school shall:

(a) obtain division approval of the school name; and

(b) certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, and address of the physical facility;

(ii) name, phone number, and address of each school director;

(iii) name, phone number, and address of each school owner; and

(iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name as approved by the division pursuant to this Subsection (1)(a) is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

(i) type of school; and

(ii) description of the school's physical facilities;

(e) list of courses offered;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(g) proof that each instructor is:

(i) certified by the division;

(ii) qualified as a guest lecturer by having:

_____ (A) requisite expertise in the field; and
 _____ (B) approval from the division; or
 _____ (iii) exempt from certification under Subsection R162-2f-206d(4);
 _____ (h) schedule of courses offered, including the days, times, and locations of classes;
 _____ (i) statement of attendance requirements as provided to students;
 _____ (j) refund policy as provided to students;
 _____ (k) disclaimer as provided to students;
 _____ (l) criminal history disclosure statement as provided to students; and
 _____ (m) any other information the division requires.
 _____ (3) Minimum standards.
 _____ (a) The course schedule may not provide or allow for more than eight credit hours per student per day.
 _____ (b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.
 _____ (c) The disclaimer shall adhere to the following requirements:
 _____ (i) be typed in all capital letters at least 1/4 inch high; and
 _____ (ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."
 _____ (d) The criminal history disclosure statement shall:
 _____ (i) be provided to each student prior to the school accepting payment; and
 _____ (ii) clearly inform the student that upon application with the division, the student will be required to:
 _____ (A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;
 _____ (B) submit fingerprint cards to the division and consent to a criminal background check; and
 _____ (C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;
 _____ (iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and
 _____ (iv) include a section for the student's attestation that the student has read and understood the disclosure.
 _____ (e) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide to the division written notice of the change.
 _____ (4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
 _____ (b) To renew a school certification, an applicant shall:
 _____ (i) complete a renewal application as provided by the division; and
 _____ (ii) pay a nonrefundable renewal fee.
 _____ (c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:
 _____ (i) comply with all requirements for a timely renewal; and
 _____ (ii) pay a nonrefundable late fee.

_____ (d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:
 _____ (i) comply with all requirements for a timely renewal; and
 _____ (ii) pay a non-refundable reinstatement fee.
 _____ (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
 _____ (f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

_____ (1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
 _____ (a) comprehensive course outline including:
 _____ (i) description of the course;
 _____ (ii) number of class periods spent on each subject area;
 _____ (iii) minimum of three to five learning objectives for every three hours of class time; and
 _____ (iv) reference to the course outline approved by the commission for each topic;
 _____ (b) number of quizzes and examinations;
 _____ (c) grading system, including methods of testing and standards of grading;
 _____ (d)(i) a copy of at least two final examinations to be used in the course;
 _____ (ii) the answer key(s) used to determine if a student has passed the exam; and
 _____ (iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and
 _____ (e) a list of the titles, authors and publishers of all required textbooks.
 _____ (2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:
 _____ (a) all items listed in this Subsection (1);
 _____ (b) description of each method of course delivery;
 _____ (c) description of any media to be used;
 _____ (d) course access for the division using the same delivery methods and media that will be provided to the students;
 _____ (e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;
 _____ (f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;
 _____ (g) description of how and when certified prelicensing instructors will be available to answer student questions; and
 _____ (h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.
 _____ (3) Minimum standards. A prelicensing course shall:
 _____ (a) address each topic required by the course outline as approved by the commission;

_____ (b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(c)(i) and these rules;

_____ (c) limit the credit that students may earn to no more than eight credit hours per day;

_____ (d) be taught in an appropriate classroom facility unless approved for distance education;

_____ (e) allow a maximum of 10% of the required class time for testing, including:

_____ (i) practice tests; and

_____ (ii) a final examination; and

_____ (f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline.

_____ (4) A precertification course expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

RI62-2f-206c. Certification of Continuing Education Course.

_____ (1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.

_____ (b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

_____ (2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

_____ (a) name and contact information of the course provider;

_____ (b) name and contact information of the entity through which the course will be provided;

_____ (c) description of the physical facility where the course will be taught;

_____ (d) course title;

_____ (e) number of credit hours;

_____ (f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:

_____ (i) knowledge;

_____ (ii) professionalism; and

_____ (iii) ability to protect and serve the public;

_____ (g) course outline including a description of the subject matter covered in each 15-minute segment;

_____ (h) a minimum of three learning objectives for every three hours of class time;

_____ (i) name and certification number of each certified instructor who will teach the course;

_____ (j) copies of all materials to be distributed to participants;

_____ (k) signed statement in which the course provider and instructor(s):

_____ (i) agree not to market personal sales products;

_____ (ii) allow the division or its representative to audit the course on an unannounced basis; and

_____ (iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

_____ (A) course name;

_____ (B) course certificate number assigned by the division;

_____ (C) date(s) the course was taught;

_____ (D) number of credit hours; and

_____ (E) names and license numbers of all students receiving continuing education credit;

_____ (l) procedure for pre-registration;

_____ (m) tuition or registration fee;

_____ (n) cancellation and refund policy;

_____ (o) procedure for taking and maintaining control of attendance during class time;

_____ (p) sample of the completion certificate;

_____ (q) nonrefundable fee for certification as required by the division; and

_____ (r) any other information the division requires.

_____ (3) To certify a continuing education course for distance education, a person shall:

_____ (a) comply with this Subsection (2);

_____ (b) submit to the division a complete description of all course delivery methods and all media to be used;

_____ (c) provide course access for the division using the same delivery methods and media that will be provided to the students;

_____ (d) describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

_____ (e) describe how and when certified instructors will be available to answer student questions; and

_____ (f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

_____ (4) Minimum standards.

_____ (a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.

_____ (b) The minimum length of a course shall be one credit hour.

_____ (c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

_____ (d) The completion certificate shall allow for entry of the following information:

_____ (i) licensee's name;

_____ (ii) type of license;

_____ (iii) license number;

_____ (iv) date of course;

_____ (v) name of the course provider;

_____ (vi) course title;

_____ (vii) number of credit hours awarded;

_____ (viii) course certification number;

_____ (ix) course certification expiration date;

_____ (x) signature of the course sponsor; and

_____ (xi) signature of the licensee.

_____ (5) Certification procedures.

_____ (a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

(i) state approved forms and contracts;

(ii) other industry used forms or contracts;

(iii) ethics;

(iv) agency;

(v) short sales or sales of bank-owned property;

(vi) environmental hazards;

(vii) property management;

(viii) prevention of real estate and mortgage fraud;

(ix) federal and state real estate laws;

(x) division administrative rules; and

(xi) broker trust accounts;

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use the form(s) or contract(s) taught in the course;

(ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and subagency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;

(xxi) division administrative rules;

(xxii) land development;

(xxiii) land use;

(xxiv) planning and zoning;

(xxv) construction;

(xxvi) energy conservation in buildings;

(xxvii) water rights;

(xxviii) landlord/tenant relationships;

(xxix) property disclosure forms;

(xxx) Americans with Disabilities Act;

(xxxi) fair housing;

(xxxii) affirmative marketing;

(xxxiii) commercial real estate;

(xxxiv) tenancy in common;

(xxxv) professional development;

(xxxvi) business success;

(xxxvii) customer relation skills;

(xxxviii) sales promotion, including:

(A) salesmanship;

(B) negotiation;

(C) sales psychology;

(D) marketing techniques related to real estate knowledge;

(E) servicing clients; and

(F) communication skills;

(xxxix) personal and property protection for licensees and their clients;

(xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety; and

(xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.

(f) Unacceptable topics include the following:

(i) offerings in mechanical office and business skills, including:

(A) typing;

(B) speed reading;

(C) memory improvement;

(D) language report writing;

(E) advertising; and

(F) technology courses with a principal focus on technology operation, software design, or software use;

(ii) physical well-being, including:

(A) personal motivation;

(B) stress management; and

(C) dress-for-success;

(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:

(A) sales meetings;

(B) in-house staff meetings or training meetings; and

(C) member orientations for professional organizations;

(iv) courses in wealth creation or retirement planning for licensees; and

(v) courses that are specifically designed for exam preparation.

(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.

(6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

_____ (c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:

_____ (i) comply with all requirements for a timely renewal; and

_____ (ii) pay a nonrefundable late fee.

_____ (d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:

_____ (i) comply with all requirements for a timely renewal; and

_____ (ii) pay a non-refundable reinstatement fee.

_____ (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

_____ (f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.

_____ (1) An instructor shall certify with the division prior to teaching a prelicensing course.

_____ (2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:

_____ (a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

_____ (b) evidence of having graduated from high school or achieved an equivalent education;

_____ (c) evidence that the applicant understands the real estate industry through:

_____ (i) a minimum of five years of full-time experience as a real estate licensee;

_____ (ii) post-graduate education related to the course subject; or

_____ (iii) demonstrated expertise on the subject proposed to be taught;

_____ (d) evidence of ability to teach through:

_____ (i) a minimum of 12 months of full-time teaching experience;

_____ (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

_____ (iii) attendance at a division instructor development workshop totaling at least two days in length;

_____ (e) evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught;

_____ (f) name and certification number of the certified prelicensing school for which the applicant will work;

_____ (g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

_____ (h) a signed statement agreeing not to market personal sales products;

_____ (i) any other information the division requires;

_____ (j) an application fee; and

_____ (k) course-specific requirements as follows:

_____ (i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and

_____ (ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.

_____ (3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:

_____ (a) Brokerage Management. An applicant shall:

_____ (i) hold a current real estate broker license;

_____ (ii) possess at least two years practical experience as an active real estate principal broker; and

_____ (iii)(A) have experience managing a real estate office; or

_____ (B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.

_____ (b) Advanced Real Estate Law. An applicant shall:

_____ (i) hold a current real estate broker license;

_____ (ii) evidence current membership in the Utah State Bar; or

_____ (iii)(A) have graduated from an American Bar Association accredited law school; and

_____ (B) have at least two years real estate law experience.

_____ (c) Advanced Appraisal. An applicant shall hold:

_____ (i) a current real estate broker license; or

_____ (ii) a current appraiser license or certification from the division.

_____ (d) Advanced Finance. An applicant shall:

_____ (i) evidence at least two years practical experience in real estate finance; and

_____ (ii)(A) hold a current real estate broker license;

_____ (B) evidence having been associated with a lending institution as a loan officer; or

_____ (C) hold a degree in finance.

_____ (e) Advanced Property Management. An applicant shall hold a current real estate license and:

_____ (i) evidence at least two years full-time experience as a property manager; or

_____ (ii) hold a certified property manager or equivalent professional designation.

_____ (4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.

_____ (5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

_____ (b) To renew a prelicensing course instructor certification, an individual shall:

_____ (i) submit all forms required by the division;

_____ (ii) evidence having taught, within the two-year period prior to the date of application, at least 20 hours of in-class instruction in a certified real estate course;

_____ (iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and

_____ (iv) pay a nonrefundable renewal fee.

_____ (c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:

_____ (i) comply with all requirements for a timely renewal; and

_____ (ii) pay a nonrefundable late fee.

(d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course Instructor.

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:

(a) name and contact information of the applicant;

(b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(c) evidence of having graduated from high school or achieved an equivalent education;

(d) evidence that the applicant understands the subject matter to be taught through:

(i) a minimum of two years of full-time experience as a real estate licensee;

(ii) college-level education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(e) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at a division instructor development workshop totaling at least two days in length;

(f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(g) a signed statement agreeing not to market personal sales products;

(h) any other information the division requires; and

(i) a nonrefundable application fee.

(3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

(i) submit all forms required by the division;

(ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

(B) submit written explanation outlining:

(I) the reason for not having taught a minimum of 12 continuing education credit hours; and

(II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

(iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-207. Reporting a Change of Information.

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with this Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

(a) change in entity's name;

(b) change in entity's affiliation with a principal broker;

(c) change in corporate structure; and

(d) dissolution of corporation.

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

(A) marriage certificate;

(B) divorce decree;

(C) court order; or

(D) driver license; and
(ii) if the person is an entity:
(A) obtain prior approval from the division of the new entity name; and
(B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.
(b) Address. To report a change in address, a person shall enter the change into RELMS.
(c) Affiliation.
(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and
(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or
(II) comply with this Subsection (4); and
(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.
(ii) To terminate an affiliation between a principal broker and an entity:
(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and
(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:
(I) cease operations;
(II) submit to the division a paper company/branch change form to inactivate the entity registration;
(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;
(IV) advise the division as to the location where records will be stored;
(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;
(VI) notify each party and cooperating broker to any existing contracts; and
(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.
(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.
(iv) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:
(A) if the change does not involve a change in ownership, submit a letter to the division, fully explaining the change; and
(B) if the change involves a change in ownership, obtain a new registration.
(v) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii) (B).
(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and
(b) as applicable:
(i) entering the certified mail reference number into the appropriate field on the electronic change form; or
(ii) providing to the division a copy of the certified mail receipt.
(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.
(6) Deadlines.
(a) A change in affiliation shall be reported to the division before the change is made.
(b) A change in branch manager shall be reported to the division at the time the change is made.
(c) Any other change shall be reported to the division within ten business days of the change taking effect.
(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-307. Undivided Fractionalized Long-Term Estate.

(1) A real estate licensee who markets an undivided fractionalized long-term estate shall:
(a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and
(b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.
(2) Required disclosures.
(a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:
(i) current certified financial statements;
(ii) current credit reports;
(iii) information concerning any bankruptcies or civil lawsuits;
(iv) proposed use of purchaser proceeds;
(v)(A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and
(B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;
(vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and
(vii) statement as to whether any affiliate of the sponsor is:
(A) a third-party service provider; or
(B) a master lease tenant.
(b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:
(i) material information concerning any leases or subleases affecting the real property;

(ii) material information concerning any environmental issues affecting the real property;

(iii) a preliminary title report on the real property;

(iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;

(v) if applicable, rent rolls and operating history;

(vi) if applicable, loan documents;

(vii)(A) a tenants in common agreement; or

(B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;

(viii) third party reports acquired by the sponsor;

(ix) a narrative appraisal report that:

(A) is effective no more than six months prior to the date the offer of sale is made; and

(B) includes, at a minimum:

(I) pictures;

(II) type of construction;

(III) age of building; and

(IV) site information such as improvements, parking, cross easements, site and location maps;

(x) material information concerning the market conditions for the property class; and

(xi) material information concerning the demographics of the general market area.

(c) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:

(i) contact information for any existing or recommended asset managers and property managers;

(ii) description of any relationship between:

(A) the asset managers and the sponsor; and

(B) the property managers and the sponsor; and

(iii) copies of any existing:

(A) asset management agreements; and

(B) property management agreements.

(d) Disclosure as to potential tax consequences, including the following:

(i) a statement that there might be tax consequences for a failure to close on the purchase;

(ii) a statement that there might be risks involved in the purchase; and

(iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters.

(3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for all money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

(a) a seller the individual represents;

(b) a buyer the individual represents;

(c) a buyer and seller the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidential;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe all money or property entrusted to the limited agent; and

_____ (iv) any additional duties created by the agency agreement;

_____ (5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties;

_____ (a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

_____ (b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

_____ (c) the licensee's agency relationship(s);

_____ (d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

_____ (ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

_____ (6) when completing a listing agreement, make reasonable efforts to verify the accuracy and content of the listing;

_____ (7) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

_____ (8) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure;

_____ (a) in the currently approved Real Estate Purchase Contract; or

_____ (b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

_____ (9) when executing a lease or rental agreement, confirm the prior agency disclosure by:

_____ (a) incorporating it into the agreement; or

_____ (b) attaching it as a separate document;

_____ (10) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:

_____ (a) obtain authorization from the licensee's principal broker to offer the inducement;

_____ (b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and

_____ (c) provide notice of the inducement, using any method or form, to:

_____ (i) the principal broker of the seller's agent, if the seller paying a commission is represented; or

_____ (ii) the seller, if the seller paying a commission is not represented;

_____ (11) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

_____ (a) notify the listing brokerage that sub-agency is requested; and

_____ (b) enter into a written agreement with the listing brokerage with which the seller has contracted:

_____ (i) consenting to the sub-agency; and

_____ (ii) defining the scope of the agency;

_____ (c) obtain from the listing brokerage all available information about the property; and

_____ (d) uphold the same fiduciary duties outlined in this Subsection (1);

_____ (12) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

_____ (13)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

_____ (i) the principal broker's individual name; or

_____ (ii) the principal broker's brokerage name; and

_____ (b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

_____ (14) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

_____ (a) the licensee is involved as agent or principal;

_____ (b) the licensee has received funds on behalf of the principal broker; or

_____ (c) an offer has been written;

_____ (15)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

_____ (b) ensure that any such compensation is paid to the licensee's principal broker;

_____ (16) in negotiating and closing transactions, use:

_____ (a)(i) the standard forms approved by the commission and identified in Section R162-2f-401f;

_____ (ii) standard supplementary clauses approved by the commission; and

_____ (iii) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;

_____ (b) forms prepared by an attorney for a party to the transaction, if:

_____ (i) a party to the transaction requests the use of the attorney-drafted forms; and

_____ (ii) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or

_____ (c) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:

_____ (i) the principal; or

_____ (ii) an entity in the business of selling blank legal forms;

_____ (17) use an approved addendum form to make a counteroffer or any other modification to a contract;

_____ (18) in order to sign or initial a document on behalf of a principal:

_____ (a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

_____ (b) retain in the file for the transaction a copy of said power of attorney;

_____ (c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

_____ (d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

_____ (e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name)."

_____ (19) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

_____ (20) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(21) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(22) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(23) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare; or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation in an application for license renewal with the division;

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real

estate transaction, except that a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(22);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information; or

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

(1) A principal broker shall:

(a)(i) maintain all records pertaining to a real estate transaction for at least three calendar years following the year in which:

(A) an offer is rejected; or

(B) the transaction either closes or fails; and

(ii) make such records available for inspection and copying by the division;

(b) unless otherwise authorized by the division in writing, maintain business records at:

(i) the principal business location designated by the principal broker on division records; or

(ii) where applicable, a branch office as designated by the principal broker on division records;

_____ (c) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained;

_____ (d) upon filing for brokerage bankruptcy, notify the division in writing of:

_____ (i) the filing; and

_____ (ii) the current location of brokerage records;

_____ (e) provide to the person whom the principal broker represents in a transaction:

_____ (i) a detailed statement showing the current status of a transaction upon the earlier of:

_____ (A) the expiration of 30 days after an offer has been made and accepted; or

_____ (B) a buyer or seller making a demand for such statement; and

_____ (ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

_____ (f)(i) regardless of who closes a transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

_____ (A) the principal broker;

_____ (B) an associate broker or branch broker affiliated with the principal broker; or

_____ (C) the sales agent who is:

_____ (I) affiliated with the principal broker; and

_____ (II) representing the principal in the transaction; and

_____ (ii) ensure the principals in each closed transaction receive copies of all documents executed in the transaction closing;

_____ (g) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

_____ (i) an identification of the property involved in the real estate transaction;

_____ (ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

_____ (iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

_____ (iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

_____ (v) additional instructions at the discretion of the principal broker;

_____ (h) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

_____ (i) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:

_____ (i) the principal broker for an entity; or

_____ (ii) a branch broker;

_____ (j) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

_____ (k) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

_____ (l)(i) except as provided in this Subsection (1)(l)(ii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account;

_____ (A) maintained by the principal broker pursuant to Section R162-2f-403; or

_____ (B) if the parties to the transaction agree in writing, maintained by:

_____ (I) a title company pursuant to Section 31A-23a-406; or

_____ (II) another authorized escrow entity;

_____ (ii) a principal broker is not required to comply with this Subsection (1)(l)(i) if:

_____ (A) the Real Estate Purchase Contract or other agreement states that the money is to be:

_____ (I) held for a specific length of time; or

_____ (II) deposited upon acceptance by the seller; or

_____ (B) the Real Estate Purchase Contract or other agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

_____ (I) names the seller as payee; and

_____ (II) is retained in the principal broker's file until closing;

_____ (m)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate transactions; and

_____ (ii) be personally responsible at all times for deposits held in the principal broker's trust account;

_____ (n)(i) assign a consecutive, sequential number to each offer, such that all pertinent documents may be readily identified as relating to the offer;

_____ (ii) maintain a separate transaction file for each offer, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

_____ (iii) maintain a record of each rejected offer that does not involve funds deposited to trust:

_____ (A) in separate files; or

_____ (B) in a single file holding all such offers; and

_____ (o) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):

_____ (i) actively supervise any such associate broker or branch broker; and

_____ (ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

_____ (2) A principal broker shall not be deemed in violation of this Subsection (1)(i) where:

_____ (a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

_____ (b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

_____ (c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

_____ (d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

_____ (e) the broker did not participate in the violation;

_____ (f) the broker did not ratify the violation; and

_____ (g) the broker did not attempt to avoid learning of the violation.

R162-2f-401d. School Conduct.

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of preclicensing courses with the state-approved course outline; and

(ii) ensure that any preclicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a preclicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d); and

(ii) obtain the student's signature on the criminal history disclosure;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) at the conclusion of a course;

(i) provide to each student who completes the course a course evaluation in the form required by the division; and

(ii) submit the completed course evaluations to the division within ten business days;

(k) within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(l) substantiate, upon request by the division, any claims made in advertising; and

(m) include in all advertising materials the continuing education course certification number issued by the division.

(2) Prohibited conduct. A school may not:

(a) award continuing education credit for a course that has not been certified by the division prior to its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time;

or

(ii) pass a course final examination;

(c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation in advertising about any course of instruction;

(g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;

(h) make disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the preclicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) award credit for an online course to a student who fails to complete the course within one year of the registration date;

(p) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

R162-2f-401e. Instructor Conduct.

(1) Affirmative duties. An instructor shall:

(a) adhere to the approved outline for any course taught;

(b) comply with a division request for information within ten business days of the date of the request; and

(c) maintain a professional demeanor in all interactions with students.

(2) Prohibited conduct. An instructor may not:

(a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(b) continue to teach any course after the course has expired and without renewing the course certification.

R162-2f-401f. Approved Forms.

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

- (1) August 27, 2008, Real Estate Purchase Contract;
- (2) January 1, 1999 Real Estate Purchase Contract for Residential Construction;
- (3) January 1, 1987, Uniform Real Estate Contract;
- (4) October 1, 1983, All Inclusive Trust Deed;
- (5) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;
- (6) August 5, 2003, Addendum to Real Estate Purchase Contract;
- (7) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;
- (8) January 1, 1999, Buyer Financial Information Sheet;
- (9) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;
- (10) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;
- (11) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and
- (12) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

- (1) obtain the permission of the licensee's principal broker before employing the individual;
- (2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:
 - (a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;
 - (b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;
 - (c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;
 - (d) placing brokerage signs on listed properties;
 - (e) having keys made for listed properties; and
 - (f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;
- (3) compensate a personal assistant at a predetermined rate that is not:
 - (a) contingent upon the occurrence of real estate transactions; or
 - (b) determined through commission sharing or fee splitting; and
 - (4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

R162-2f-401h. Requirements and Restrictions in Advertising.

(1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:

- (a) a licensee advertises unlisted property in which the licensee has an ownership interest; and
- (b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."

(2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.

(3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.

(4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.

(5) An advertising team, group, or other marketing entity that is not registered as a brokerage:

- (a) shall, in all types of advertising, clearly:
 - (i) disclose that the team, group, or other marketing entity is not itself a brokerage; and
 - (ii) state the name of the registered brokerage with which the property being advertised is listed;
- (b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and
- (c) may not advertise as an "owner-agent" or "owner-broker."

(6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:

- (i) a statement that costs and conditions may apply; and
- (ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(21).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401i. Standards for Real Estate Auctions.

A principal broker who contracts or in any manner affiliates with an auctioneer or auction company to sell at auction real property in this state shall:

- (1) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions;
- (2) ensure that advertising and promotional materials associated with an auction name the principal broker;
- (3) attend and supervise the auction;
- (4) ensure that any purchase agreement used at the auction:
 - (a) meets the requirements of Subsection R162-2f-401a(16); and

_____ (b) is completed by an individual holding an active Utah real estate license;

_____ (5) ensure that any money deposited at the auction is placed in trust pursuant to Subsection R162-2f-401c(1)(l); and

_____ (6) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

R162-2f-401j. Standards for Property Management.

_____ (1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage unless the principal broker obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

_____ (2)(a) The principal broker shall diligently supervise the activities of each sales agent or associate broker who is affiliated with the principal broker and assigned to perform property management tasks.

_____ (b) If property management activities are conducted at a branch office, the branch broker shall actively supervise the licensees and unlicensed assistants working from that branch.

_____ (3) The principal broker shall sign and submit forms as required by the division to affiliate the property management company with each associate broker, branch broker, and sales agent who will conduct the business of property management.

_____ (4) No real estate sales activity may be conducted by a property management company.

_____ (5) Individuals who are principals or owners of an entity registered as a property management company may not engage in activities that require licensure as a sales agent, associate broker, or principal broker without first obtaining a license and establishing an affiliation pursuant to Sections R162-2f-202a through 202c.

_____ (6) An individual employed by a property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

_____ (a) providing a prospective tenant with access to a vacant unit;

_____ (b) providing secretarial, bookkeeping, maintenance, or rent collection services;

_____ (c) quoting predetermined rent and lease terms; and

_____ (d) completing pre-printed lease or rental agreements.

R162-2f-402. Investigations.

_____ The investigative and enforcement activities of the division shall include the following:

_____ (1) verifying information provided on new license applications and applications for license renewal;

_____ (2) evaluation and investigation of complaints;

_____ (3) auditing licensees' business records, including trust account records;

_____ (4) meeting with complainants, respondents, witnesses, and attorneys;

_____ (5) making recommendations for dismissal or prosecution;

_____ (6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;

_____ (7) working with the assistant attorney general and representatives of other state and federal agencies; and

_____ (8) entering into proposed stipulations for presentation to the commission and the director.

R162-2f-403. Trust Accounts.

_____ (1) A principal broker shall:

_____ (a) maintain a trust account in a bank or credit union located within the state of Utah;

_____ (b) notify the division in writing of:

_____ (i) the account number; and

_____ (ii) the address of the bank or credit union where the account is located; and

_____ (c) use the account for the purpose of securing clients funds:

_____ (i) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

_____ (ii) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

_____ (iii) collected in the performance of property management duties as specified in this Subsection (4)(b).

_____ (2) A principal broker who deposits in any trust account more than \$500 of the principal broker's own funds violates Subsection 61-2f-401(4)(b).

_____ (3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.

_____ (4)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish a property management trust account separate from the real estate trust account.

_____ (b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

_____ (5) A trust account maintained by a principal broker shall be non-interest-bearing, unless:

_____ (a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;

_____ (b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;

_____ (c) the person designated under this Subsection (5)(b):

_____ (i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

_____ (ii) operates exclusively to provide grants to affordable housing programs in Utah; and

_____ (d) the affordable housing program that is the recipient of the grant under this Subsection (5)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

_____ (6) Disbursement of funds held in trust.

_____ (a) A principal broker may disburse funds only in accordance with:

_____ (i) specific language in the Real Estate Purchase Contract authorizing disbursement;

_____ (ii) other proper written authorization of the parties having an interest in the funds; or

_____ (iii) court order.

(b) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(c) A principal broker may not withdraw any portion of the principal broker's sales commission:

(i) without written authorization from the seller and buyer; or

(ii)(A) until after the settlement statements have been delivered to the buyer and seller; and

(B) the buyer or seller has been paid for the amount due as determined by the settlement statement.

(d) A principal broker may not pay a commission from the real estate trust account:

(i) until after the transaction has closed or otherwise terminated; and

(ii) without making a record of each disbursement.

(e) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(i) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(ii) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

(f) If both parties to a contract make a written claim to the earnest money or other trust funds and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(i) interplead the funds into court and thereafter disburse:

(A) upon written authorization of the party who will not receive the funds; or

(B) pursuant to the order of a court of competent jurisdiction; or

(ii) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(A) no party has filed a civil suit arising out of the transaction; and

(B) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(g) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

RI62-2f-407. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-46b; and

(iii) the rules promulgated by the division.

(c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least ten business days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-46b-6, an attorney may represent a party.

(5) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

TABLE 1
APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:

(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points

COMMERCIAL

(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE 2
APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL

(a) Each unit managed	0.25 pt/month
-----------------------	---------------

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building

(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month
--	------------

TABLE 3
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, licensing, enforcement

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 61-2f-103(1), 61-2f-105, 61-2f-307

Commerce, Real Estate R162-3 License Status Change

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34196

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Where the substantive provisions of this rule are incorporated into the proposed new Rule

R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ LOCAL GOVERNMENTS: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ SMALL BUSINESSES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
 REAL ESTATE
 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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~R162-3. License Status Change.~~

R162-3-1. Status Changes.

~~3.1. A licensee must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate non-refundable fees are received by the Division. Notice must be on the forms required by the Division.~~

~~3.1.1. Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.~~

~~3.1.2. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.~~

~~3.1.3. Change of name of a brokerage must be accompanied by evidence that the new name has been approved by the Division of Corporations, Department of Commerce.~~

~~3.1.4. Change of Principal Broker of a real estate brokerage which is a sole proprietorship, requires closure of the registered entity. The new principal broker shall activate the Registered Company and provide proof from the Division of Corporations of the authorization to use the DBA. Change cards will be required for the terminating Principal Broker, new Principal Broker and all licensees affiliated with the brokerage.~~

~~3.1.5. Change of a Principal Broker within an entity which is not a sole proprietorship requires written notice from the entity signed by both the terminating Principal Broker and the new Principal Broker.~~

R162-3-2. Unavailability of Licensee.

~~3.2. If a licensee is not available to properly execute the form required for a status change, the status change may still be made provided a letter advising of the change is mailed by certified mail to the last known address of the unavailable licensee. A verified copy of the letter and proof of mailing by certified mail must be attached to the form when it is submitted to the Division.~~

R162-3-3. Transfers.

~~3.3. Prior to transferring from one principal broker to another principal broker, the licensee must mail or deliver to the Division written notice of the change on the form required by the Division.~~

R162-3-4. Inactivation.

~~3.4. To voluntarily inactivate a license, the licensee must deliver or mail to the Division a written request for the change signed by both the licensee and principal broker.~~

~~3.4.1. Prior to placing a principal broker license on an inactive status, a principal broker must provide written notice to each licensee affiliated with the principal broker of that licensing status change. Evidence of that written notice must be provided to the Division in order to process the status change. The inactivation of the license of a principal broker will also cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.~~

~~3.4.2. The non-renewal, suspension, or revocation of the license of a principal broker will cause the licenses of affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.~~

~~3.4.2.1. When a principal broker is notified that the principal broker's license will be suspended or revoked, the principal broker must, prior to the effective date of the suspension~~

or revocation, provide written notice to each licensee affiliated with the principal broker of that status change. In addition, the Division shall send written notice to each sales agent, associate broker, or branch broker of the effective date of inactivation and the process for transfer.

~~3.4.3. The principal broker may involuntarily inactivate the license of the sales agent or associate broker by complying with R162-3.2.~~

R162-3-5. Activation.

~~3.5. Licensees changing to active status must submit to the Division the applicable non-refundable activation fee, a request for activation in the form required by the Division, and, if the license was on inactive status at the time of last license renewal, proof of completion of the examination within six months prior to applying to activate or proof of completion of the 18 hours of continuing education that the licensee would have been required to complete in order to renew on active status. If a licensee last renewed on inactive status and applies to activate the license at the time of license renewal, the licensee shall be required to complete the 18 hours of continuing education required to renew but shall not be required to complete additional continuing education in order to activate the license.~~

~~3.5.1 Continuing Education for Activation. The 18 hours of continuing education required to activate a license shall be made up of at least 9 hours of "core" courses in subjects specified in Subsection R162-9.2.1. The balance of the 18 hours of continuing education may be "elective" courses in the subjects listed in Subsection R162-9.2.2.~~

~~3.5.1.1 To qualify as continuing education for activation, all courses submitted must have been completed within one year before activation.~~

~~3.5.1.2 Continuing education that was submitted to activate a license may not be used again toward the continuing education required on the licensee's next renewal.~~

R162-3-6. Renewal and Reinstatement.

~~3.6.1 Licenses are valid for a period of two years. A license may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current license. Licenses not properly renewed shall expire on the expiration date.~~

~~3.6.1.1 Reinstatement~~

~~(a) A license may be reinstated within thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.~~

~~(b) A license may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal, paying a non-refundable reinstatement fee and submitting proof of having completed 12 hours of continuing education in addition to the 18 hours of continuing education required to renew a license on active status.~~

~~(c) A license may be reinstated after the six-month period described in Subsection (b) and until one year after expiration by complying with all requirements for a timely renewal, paying a non-refundable reinstatement fee, and submitting proof of having completed 24 hours of continuing education in addition to the 18 hours of continuing education required to renew a license on active status.~~

~~(d) A license that has been expired for more than one year may not be reinstated and an applicant must apply for a new license following the same procedure as an original license.~~

~~3.6.2 Renewal Requirements.~~

~~3.6.2.1 Continuing Education. To renew a license on active status, an applicant must submit to the division proof of having completed, during the previous license period and by the 15th day of the month of expiration, 18 non-duplicative hours of continuing education from courses certified by the division.~~

~~(a) During the first license period, a licensee must take the 12-hour "New Sales Agent Course" certified by the division. Licensees in their first license period will need to complete 6 additional non-duplicative hours of continuing education (either "core" or "elective") as defined in R162-9.2.1-9.2.10.~~

~~(b) During subsequent license periods, a licensee must take at least 9 hours of non-duplicative continuing education from courses certified by the division as "core" as defined in R162-9.2.1. A licensee must take any remaining hours of continuing education from courses certified by the division as "elective" as defined in R162-9.2.2-9.2.2.10.~~

~~(c) The division may grant continuing education credit for non-certified courses submitted by a renewal applicant in the form required by the division, if the course was not required by these rules to be certified and the division determines that the course meets the continuing education objectives listed in Rule R162-9.2.~~

~~(d) Licensees must retain original course completion certificates for three years following renewal and produce those certificates when audited by the division.~~

~~3.6.2.2 Principal Broker. To renew a principal broker license on active status an applicant must certify that the business name under which the licensee is operating is current and in good standing with the Division of Corporations and that all real estate trust accounts are current and in compliance with Rule R162-4.2.~~

~~3.6.2.3 Any misrepresentation in an application for renewal is a separate violation of these rules and separate grounds for disciplinary action against the licensee.~~

KEY: real estate business

Date of Enactment or Last Substantive Amendment: June 21, 2010

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 61-2-5.5]

Commerce, Real Estate
R162-4
Office Procedures - Real Estate
Principal Brokerage

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34197

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ **LOCAL GOVERNMENTS:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ **SMALL BUSINESSES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
 REAL ESTATE
 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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~**[R162-4. Office Procedures – Real Estate Principal Brokerage.**~~

~~**R162-4.1. Records and Copies of Documents.**~~

~~4.1. The principal broker must maintain in his office and make available for inspection and copying by the Division all records pertaining to a real estate transaction for a period of at least three calendar years following the year in which an offer was rejected or the transaction either closed or failed.~~

~~4.1.1. Location of Records. Unless otherwise authorized by the Division in writing, the business records of the principal broker shall be maintained at his principal business location or, where applicable, at the branch office. If a brokerage closes its operation the principal broker must, within ten days after the closure, notify the Division in writing of where the records will be maintained in order to comply with R162-4.1 above. If a brokerage files for bankruptcy, the principal broker must, upon filing, notify the Division in writing of the filing and the current location of brokerage records.~~

~~4.1.2. Transaction Identification. All transactions, whether pending, closed or failed, must be numbered consecutively and identifiable in a manner that, in the opinion of the representative of the Division, the transaction can be readily followed in all pertinent documents. A sequential transaction number is to be assigned to every offer, and a separate transaction file is to be maintained for every offer, including rejected offers involving funds deposited to the brokerage trust account. A sequential transaction number need not be assigned to rejected offers which do not involve funds deposited to trust. The principal broker may, at his option, maintain a separate transaction file for each rejected offer which does not involve funds deposited to trust or keep such rejected offers in a single file.~~

~~4.1.3. Statement of Account. At the expiration of 30 days after an offer has been made by a buyer and accepted by a seller, either party may demand, and the principal broker must furnish, a detailed statement showing the current status of the transaction. On demand by either party, the principal broker must furnish an updated statement at 30-day intervals thereafter until the transaction is closed.~~

~~4.1.4. Settlement Statements. A principal broker charged with closing a sale shall cause to be prepared and delivered to the buyer and seller, upon completion of a transaction, a detailed closing statement of all respective accounts showing receipts and disbursement.~~

~~4.1.4.1. Settlement statements for real estate transactions in which a real estate principal broker participates must show the~~

following: the date of settlement; the total purchase price of the property; an itemization of adjustments, money, or things of value received or paid, and to whom each item is credited or debited. The dates of the adjustments must be shown if they are not the same as the date of settlement. Also shown must be the balances due from the respective parties to the transaction, and the names of the payees, makers, and assignees of all notes paid, made, or assumed. The statements furnished to each party to the transaction must contain an itemization of credits and debits that pertain to each party.

4.1.4.2. Regardless of who closes a transaction, a principal broker is responsible for the content and accuracy of settlement statements prepared for the signature of the principal broker's client.

4.1.4.3. A principal broker who closes a transaction must show proof of delivery of the settlement statement(s) to the buyer and seller. Signatures of the buyer and seller on the file copy of the settlement statement or a copy of a transmittal letter sent by certified mail, return receipt requested, when signatures are not attainable, will satisfy this requirement.

4.1.5. Death or Disability of Principal Broker: Upon the death or inability of a principal broker to act as a principal broker the following procedures shall apply:

4.1.5.1. In the case of a corporation, partnership, Limited Liability Company, association, or other legal entity the provisions of R162-2-2.3.2. shall apply.

4.1.5.2. In the case of a sole proprietor all brokerage activity must cease and a family attorney or representative shall: (1) notify the Division and all licensees affiliated with the principal broker in writing of the date of death or disability; (2) advise the Division as to the location where records will be stored; (3) notify each listing and management client in writing to the effect that the principal broker is no longer in business and that the client may enter a new listing or management agreement with the firm of the client's choice; (4) notify each party and cooperating broker to any existing contracts; and (5) retain trust account monies under the control of the administrator, executor or co-signer on the account until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

R162-4-2. Trust Accounts:

4.2 All monies received in a real estate transaction regulated under Section 61-2-1, et seq., must be deposited in a "Real Estate Trust Account," in a Utah bank, credit union, or other approved escrow depository in this state. Such "Real Estate Trust Account" shall be non-interest-bearing except as provided in Section 4.2.4 below. The principal broker will be held personally responsible for deposits at all times. The principal broker must notify the Division in writing of the location and account numbers of all real estate trust accounts which he maintains. All "Real Estate Trust Accounts" shall be used exclusively for real estate transactions regulated under Section 61-2-1, et seq. Funds received in connection with rental of tourist accommodations for any period of less than 30 consecutive days shall not be deposited in a "Real Estate Trust Account".

4.2.1. Deposits. All monies received by a licensee in a real estate transaction, whether it be cash or check, must be delivered to the principal broker and deposited within three banking

days after receipt of the funds by the licensee. This rule does not apply when:

4.2.1.1. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be held for a specific length of time or are to be deposited upon acceptance by the seller; or

4.2.1.2. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be made out and paid to the seller, or to the person or company named as the escrow closing agent; or

4.2.1.3. A promissory note is given as the earnest money deposit or otherwise credited to the transaction. The promissory note must name the seller as payee and be retained in the principal broker's file until closing. If a promissory note is used in a real estate transaction, the Real Estate Purchase Contract or other agreement must disclose that the consideration is in the form of a promissory note.

4.2.2. Commingling. Not more than \$500 of the principal broker's own funds can remain in the "Real Estate Trust Account" or the "Property Management Trust Account," or the Division will consider the account to be commingled.

4.2.3. Builder Deposits. If a principal broker, who is also a builder or developer, receives deposit money under a Real Estate Purchase Contract, construction contract, or other agreement which provides for the construction of a dwelling, the deposit money must be placed in the "Real Estate Trust Account" or if the broker and the parties to the transaction agree in writing, the "Interest Bearing Real Estate Trust Account" and not be used for construction purposes unless specifically provided in the document or by separate written consent of the purchaser.

4.2.4. Interest Bearing Trust Accounts. Real Estate Trust Accounts may be interest-bearing only as provided in Section 4.2.4.1 or 4.2.4.2 below:

4.2.4.1 If an earnest money deposit or other trust funds are received and the parties to the transaction believe that it would be uneconomical to place the money in a non-interest-bearing trust account, the principal broker shall place the money in a separate interest-bearing "Real Estate Trust Account" upon written request of the parties. The written request must designate to whom the interest will be paid upon completion or failure of the sale; or

4.2.4.2 Except as provided in Section 4.2.4.1, a principal broker may elect to maintain an interest-bearing "Real Estate Trust Account" only if the interest earned on the account is paid to a non-profit organization that has qualified, and remains qualified at the time of the payment, under Section 501(c)(3) of the Internal Revenue Code. Such non-profit organization must have as its exclusive purpose the providing of grants to affordable housing programs in the State of Utah. The affordable housing program that is the recipient of the grant must also be qualified, at the time of the grant, as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. If a principal broker makes this election, the Division must be notified in writing of the location and account number of the interest-bearing "Real Estate Trust Account" at the time the account is opened.

4.2.5. Liability for Receipt. All consideration represented as received by a licensee on a Real Estate Purchase Contract or other document must have, in fact, been received by the licensee. A licensee must not rely on a buyer's or a lessee's promise to deliver the consideration at a future date.

~~4.2.6 Property Management Trust Account. Each principal broker engaged in property management shall establish a separate "Property Management Trust Account." A principal broker who collects rents for others only occasionally or who does so as a convenience for his clients, and manages no more than six accounts, may use the "Real Estate Trust Account" for this purpose and need not maintain a "Property Management Trust Account."~~

~~4.2.7. Disbursements. All cash and like payments in lieu of cash received by a principal broker in a real estate transaction are to be disbursed only in accordance with specific language in the Real Estate Purchase Contract authorizing such disbursement, other proper written authorization of the parties having an interest in the payments, or by court order.~~

~~4.2.7.1. The withdrawal of any portion of the principal broker's sales commission must not take place without written authorization from the seller and buyer or until the closing statements have been delivered to the buyer and seller and the buyer or seller has been paid for the amount due as determined by the closing statement.~~

~~4.2.7.2. Commissions due the principal broker, other licensees associated with the principal broker, or other principal brokers may be paid directly from the trust account only after the transaction is closed or otherwise terminated. If commissions are so disbursed, a record of each disbursement is to be recorded on the trust account ledger sheet for the transaction.~~

~~4.2.7.3. When it becomes apparent to the principal broker that a transaction has failed, or if a party to the failed transaction requests disbursement of the earnest money or other trust funds, the principal broker is required to determine whether any of the conditions in the Real Estate Purchase Contract authorizing disbursement have occurred or whether there is other written authorization of the parties to disburse the trust funds.~~

~~4.2.7.4. Disputes over funds. For the purposes of this section and section 4.2.7.5, a "dispute over funds" is defined as any situation in which both parties to a contract have submitted a written claim of entitlement to earnest money or other trust funds to the broker holding the funds.~~

~~4.2.7.4.1 If there is written authorization to disburse in the Real Estate Purchase Contract signed by both parties or in another writing signed by the party who will not be receiving the funds, the principal broker may disburse the funds without further delay, whether or not there is a dispute between the parties over the funds.~~

~~4.2.7.4.2 The principal broker may, at the broker's option, interplead the funds into court in any transaction where the broker is unable to determine whether there is written authorization to disburse under the circumstances of the transaction. If the principal broker interpleads the funds, the funds shall only be disbursed by the principal broker: a) upon written authorization of the parties who will not receive the funds; b) pursuant to the order of a court of competent jurisdiction; or c) as provided in Section 4.2.7.6.~~

~~4.2.7.5 Mediation. In the event a dispute arises over the return or forfeiture of the earnest money or other trust funds and the principal broker has not already disbursed the funds in accordance with section 4.2.7.4.1, or interpleaded the funds in accordance with section 4.2.7.4.2, and if no party has filed a civil suit arising out of the transaction, the principal broker shall, within 15 days of~~

~~receiving written notice of the fact that both parties claim the disputed funds, provide the parties written notice of the dispute and request them to meet to mediate the matter. If the parties have contractually agreed to submit disputes arising out of their contract to mediation, the principal broker shall notify the parties of their obligation to submit the dispute over funds to an independent mediator agreed upon by the parties. If the parties have not contractually agreed to independent mediation, the principal broker holding the earnest money or trust funds shall use good faith best efforts to mediate.~~

~~4.2.7.5.1. Unsuccessful mediation. In the event the dispute over funds is not resolved in either a broker or independent mediation attempt, the principal broker shall maintain the disputed funds in a non-interest bearing real estate trust account. If the parties authorize, or if they previously authorized, deposit into a separate interest-bearing trust account as provided in R162-4.2.4, the disputed funds may be maintained in a separate interest-bearing trust account for disputed funds. The funds shall only be disbursed by the principal broker: (1) upon written authorization of the parties who will not receive the funds; (2) pursuant to the order of a court of competent jurisdiction; or (3) as provided in Section 4.2.7.4.2.~~

~~4.2.7.6. If the principal broker has not received written notice of a claim to the funds, including interest if any, within five years after the failure of the transaction, the principal broker may remit the funds to the State Treasurer's Office as "abandoned" property according to the provisions of Utah Code Section 67-4a-101, et seq.~~

~~4.2.8. Records. A principal broker must maintain at his principal business location a complete record of all consideration received or escrowed for real estate transactions in the following manner:~~

~~4.2.8.1. A duplicate deposit slip must show the amount of money received, the transaction number, and the date and place of deposit.~~

~~4.2.8.2. A set of checks and deposit slips must be used denoting the principal broker's business name and address, stating "Real Estate Trust Account" or "Property Management Trust Account," with the checks numbered consecutively. Checks drawn on this account are to be identified to the specific transaction. Deposits to this account are to be identified to the specific transaction. Voided trust checks are to be marked "Void" and the original check retained in the principal broker's file. A principal broker may establish as many bank trust accounts as desired. However, each trust account must be identified with the type of activity for which the account is to be used and the Division must be notified in writing when each account is established.~~

~~4.2.8.3. A check register or check stubs must be maintained which itemize deposits and disbursements in consecutive order showing the date, payee or payor, the transaction information, check number, amount of disbursement or deposit, and the current balance remaining in the account.~~

~~4.2.8.4. An individual trust ledger sheet must be established upon deposit of any consideration and assigned a sequential transaction number for each transaction be it rental, sale, or other. The ledger sheet must show the names of the parties, location of the property, the date and amount of each deposit or~~

disbursement, the name of the payee and payor, the current balance remaining, and any other relevant transaction information. Each ledger sheet, after the transaction is closed, must show the final disposition of the consideration and be retained in the principal broker's file for a minimum of three years following the year in which the transaction was closed.

4.2.8.5. The trust account is to be reconciled with the bank statement at least monthly. The trust liability, which is the total of ledger cards, and similar books, records, and accounts must be kept up to date.

R162-4-3. Branch Office.

4.3 A branch office must be registered with the Division prior to operation:

4.3.1. Exemptions. A branch office does not include a model home, a project sales office, or a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

4.3.2. Operation. A branch office must operate under the same business name as the principal brokerage.

4.3.3. Trust Account. The principal broker or branch broker must notify the Division in writing of the location and account number of all real estate trust accounts in which the funds received at each branch office will be deposited.

4.3.4. Branch Broker. Each branch office must have a branch broker who will actively manage the office. The branch broker must be an associate broker. The principal broker must actively supervise the branch broker.

4.3.5. Registration. To register a branch office, the principal broker must submit to the Division, on the forms required by the Division, the location of the branch, the name of the branch broker and the names of all associate brokers and sales agents assigned to the branch, accompanied by the applicable fee.

4.3.6. Change of Branch Broker. The principal broker must notify the Division in writing on the forms required by the Division at the time of a change of branch broker.

R162-4-4. Written Instructions for Commission Distribution by Title Insurance Agent.

(1) If a principal broker elects to assign a portion or all of the principal broker's compensation to an associate broker or sales agent in accordance with Utah Code Annotated Section 61-2-10, the principal broker shall provide written instructions to the title insurance agent that include the following:

(a) an identification of the property involved in the real estate transaction;

(b) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(c) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker; and

(d) a prohibition against alteration of the written instructions by anyone other than the principal broker.

(2) Items beyond those listed in Subsection (1) may be included in the written instructions at the discretion of the principal broker.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: Jun 16, 2010

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 61-2-5.5]

Commerce, Real Estate **R162-5** Property Management

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34198

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ **LOCAL GOVERNMENTS:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ **SMALL BUSINESSES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 COMMERCE
 REAL ESTATE
 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:
 ♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
~~**[R162-5. Property Management.**~~
~~**R162-5-1. Definition.**~~

~~5.1. For purposes of this rule, property management requiring a real estate license includes advertising real estate for lease or rent, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, collecting rent and accounting for and disbursing the money collected, arranging for repairs to be made to the real estate, and all other acts listed in Section 61-2-2(13)(a). It does not include the leasing or management of surface or subsurface minerals, or oil and gas interests, which is separate from a sale or lease of the surface estate.~~

~~**R162-5-2. Exemptions.**~~

- ~~5.2. The following individuals are not required to hold active real estate licenses to engage in property management:~~
 - ~~5.2.1. Owners. An owner of real estate who manages his own property;~~
 - ~~5.2.2. Employees. A regular salaried employee of an owner of real estate who manages property owned by his employer;~~
 - ~~5.2.3. Apartment Managers. An individual who manages the apartments at which he resides in exchange for free or reduced rent on his apartment.~~
 - ~~5.2.4. Homeowner's Association Employees. A full time salaried employee of a homeowner's association who manages units subject to the declaration of condominium which established the homeowner's association.~~

~~**R162-5-3. Property Management by Real Estate Brokerage.**~~

~~5.3. All property management performed by a real estate brokerage which has not obtained a separate property management company registration, or any licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage and not under a separate business name.~~

~~5.3.1. All property management activities by a sales agent or associate broker affiliated with a principal broker shall be actively supervised by that principal broker. In the case of a branch office, the branch broker shall also actively supervise the licensees and unlicensed assistants affiliated with that branch.~~

~~**R162-5-4. Property Management by Separate Property Management Company.**~~

~~5.4. A separate property management company registration must be obtained in order to conduct property management business under a name different than that of the real estate brokerage.~~

~~5.4.1. The business of a separate property management company shall be exclusively property management. No real estate sales activity may be conducted by a property management company.~~

~~5.4.2. A license to operate a property management company will be granted upon compliance with the following conditions:~~

~~5.4.2.1. Application. Submission of the property management company application form required by the division, signed by an actively licensed principal broker, together with the proper application fees.~~

~~5.4.2.2. Business Name Approval. Compliance with the name approval provisions in R162-2.3. in the case of a principal broker who registers the name of his property management company with the division or R162-2.4. in the case of a property management company registration issued to a corporation, partnership, Limited Liability Company or association.~~

~~5.4.2.3. Property management by unlicensed principals or owners prohibited. Individuals who are principals or owners of a corporation, partnership, Limited Liability Company or association which is issued a property management company registration shall not engage in activity which requires a license unless they are licensed with the division and properly affiliated with the management broker for the corporation, partnership, Limited Liability Company or association.~~

~~5.4.3. The principal broker shall sign and submit the forms required by the division to affiliate with the property management company of each associate broker, branch broker and sales agent who will conduct property management services for the property management company.~~

~~5.4.4. Support Services Personnel. Individuals who are employees of a property management company may perform the following services under the supervision of the principal broker without holding active real estate licenses: providing a prospective tenant with access to a vacant apartment; providing secretarial, bookkeeping, maintenance, or rent collection services; quoting predetermined rent and lease terms; and filling out pre-printed lease or rental agreements.~~

~~5.4.5. Supervision. All property management activities by an associate broker or sales agent affiliated with the management company and all activities on behalf of the company by support services personnel shall be actively supervised by the principal broker of the company. In the case of a branch office, the branch broker shall also actively supervise the licensees and support services personnel affiliated with that branch.~~

~~KEY: real estate business~~

~~Date of Enactment or Last Substantive Amendment: April 23, 1998~~

~~Notice of Continuation: April 18, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 61-2-5]~~

Commerce, Real Estate **R162-6** Licensee Conduct

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34199

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ LOCAL GOVERNMENTS: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ SMALL BUSINESSES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Where the substantive provisions of this rule are incorporated

into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
REAL ESTATE
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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~[R162-6. Licensee Conduct.~~

~~R162-6-1. Improper Practices.~~

~~6.1.1. False Devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.~~

~~6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.~~

~~6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.~~

~~6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.~~

~~6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, lease or rent any real property as a principal, without first disclosing in writing on the purchase agreement or the lease or rental agreement the licensee's true position as principal in the transaction. For the purposes of this~~

rule, a licensee will be considered to be a "principal in the transaction" if the licensee: a) is the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee.

6.1.3.1. ~~Disclosure of Licensed Status.~~ Regardless of whether a person's license is in active or inactive status, a licensee shall not fail to disclose in writing on any agreement to buy, sell, lease or rent any real property as a principal that the licensee holds a Utah real estate license.

6.1.4. ~~Listing Content.~~ The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. ~~Net listings are prohibited and shall not be taken by a licensee.~~

6.1.5. ~~Advertising.~~ This rule applies to all advertising materials, including newspaper, magazine, Internet, e-mail, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. ~~Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.~~

6.1.5.2. ~~If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".~~

6.1.5.3. ~~Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.~~

6.1.5.4. ~~Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.~~

6.1.5.5. ~~Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:~~

(a) ~~The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and~~

(b) ~~The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.~~

6.1.5.6. ~~If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.~~

6.1.5.7. ~~Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.~~

6.1.5.8. ~~Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the~~

owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.5.9. ~~If an active licensee advertises to purchase or rent property, all advertising must contain the name of the licensee's real estate brokerage as shown on Division records.~~

6.1.6. ~~Double Commissions.~~ In order to avoid subjecting the seller to paying double commissions, licensees may not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. ~~A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee.~~

6.1.7. ~~Retention of Buyer's Deposit.~~ A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. ~~Unprofessional Conduct.~~ No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on the licensee's own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. ~~Finder's Fees.~~ A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. ~~Token Gifts.~~ A licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. ~~Referrals and Provision of Settlement Services.~~

6.1.10.1. ~~Referrals of Prospects to Lender or Mortgage Broker.~~ A licensee may not receive a referral fee from a lender or a mortgage broker.

6.1.10.2. ~~Providing Settlement Services.~~ A licensee may not act as a real estate agent or broker in the same transaction in which the licensee also acts as a mortgage loan officer or loan originator, appraiser, escrow agent, or provider of title services.

6.1.11. ~~Failure to Have Written Agency Agreement.~~ A principal broker and a licensee acting on the principal broker's behalf shall have written agency agreements with their principals.

6.1.11.1. ~~A principal broker and a licensee acting on the principal broker's behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency.~~

6.1.11.2. ~~A principal broker and a licensee acting on the principal broker's behalf who represent a buyer shall have a written agency agreement with the buyer defining the scope of the agency.~~

6.1.11.3. ~~A principal broker and a licensee acting on the principal broker's behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.15.3.1.~~

~~6.1.11.3.1. A licensee may not act or attempt to act as a limited agent in any transaction in which: a) the licensee is a principal in the transaction; or b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction.~~

~~6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:~~

~~(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;~~

~~(b) notify the listing brokerage that sub-agency is requested;~~

~~(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and~~

~~(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.~~

~~6.1.11.5. A principal broker and a licensee acting on the principal broker's behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.~~

~~6.1.11.6. A principal broker and a licensee acting on the principal broker's behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.~~

~~6.1.12. Signing without legal authority. A licensee shall not sign or initial any document for a principal unless the licensee has prior written authorization in the form of a duly executed power of attorney from the principal authorizing the licensee to sign or initial documents for the principal. A copy of the power of attorney shall be attached to all documents signed or initialed for the principal by the licensee.~~

~~6.1.12.1. When signing a document for a principal, the licensee shall sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact."~~

~~6.1.12.2. When initialing a document for a principal, the licensee shall initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name)."~~

~~6.1.13. Counteroffers. A licensee shall not make a counteroffer by making changes, whiting out, or otherwise altering the provisions of the Real Estate Purchase Contract or the language that has been filled in on the blanks of the Real Estate Purchase Contract. All counteroffers to a Real Estate Purchase Contract shall be made using the State Approved Addendum form.~~

R162-6-2. Standards of Practice.

~~6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees:~~

~~(a) August 27, 2008, Real Estate Purchase Contract (use of this form shall be mandatory beginning January 1, 2009);~~

~~(b) January 1, 1999 Real Estate Purchase Contract for Residential Construction;~~

~~(c) January 1, 1987, Uniform Real Estate Contract;~~

~~(d) October 1, 1983, All Inclusive Trust Deed;~~

~~(e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;~~

~~(f) August 5, 2003, Addendum to Real Estate Purchase Contract;~~

~~(g) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;~~

~~(h) January 1, 1999, Buyer Financial Information Sheet;~~

~~(i) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;~~

~~(j) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;~~

~~(k) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract;~~

~~(l) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.~~

~~6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds.~~

~~6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor.~~

~~6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example a lease, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms.~~

~~6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission which may be added to Real Estate Purchase Contracts by all licensees. The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law.~~

~~6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing.~~

~~6.2.3. Residential Construction Agreement. The Real Estate Purchase Contract for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued.~~

~~6.2.4. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the~~

requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions:

6.2.4.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously disclose that the auction is conducted under the supervision of a named principal broker licensed in this state;

6.2.4.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction;

6.2.4.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee;

6.2.4.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction; and

6.2.4.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction.

6.2.5. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

6.2.5.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee:

(a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

(b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply.

(c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.

6.2.6. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to the licensee's respective client(s) or any unrepresented parties, the licensee's agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file.

6.2.6.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement.

6.2.6.1.1. The blank in paragraph 5 of the approved Real Estate Purchase Contract for "Seller's Brokerage" shall be filled in with either the principal broker's individual name or the principal broker's brokerage name. Notwithstanding the fact that either the principal broker's name or the brokerage name may be shown in paragraph 5, filling in the name of the brokerage does not change the agency relationship with the seller.

6.2.6.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162-6.2.6.1, but shall substitute terms applicable for a rental transaction for the terms "buyer" and "seller".

6.2.6.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who the agent represents to another agent in a transaction upon initial contact with the other agent.

6.2.7. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written.

6.2.8. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them.

6.2.8.1. A broker will not be held responsible for inadequate supervision if:

(a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions;

(b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(d) The broker did not participate in the violation;

(e) The broker did not ratify the violation; and

(f) The broker did not attempt to avoid learning of the violation.

6.2.8.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or responsibilities.

6.2.9. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction.

6.2.10. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom the licensee is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10.

~~6.2.11. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to the licensee by the principal broker with whom the licensee is licensed.~~

~~6.2.12. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission.~~

~~6.2.12.1. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker who is offering the inducement must notify the principal broker of the party who will pay the commission that the inducement will be offered.~~

~~6.2.12.1.2. When the party who will pay the commission is not represented by a principal broker, the principal broker who is offering the inducement shall notify the party directly.~~

~~6.2.12.2. This rule does not:~~

~~(a) require notice under R162-6.2.12.1 to be given by one principal broker according to a specific method or form preferred by another principal broker; or~~

~~(b) authorize a principal broker to give any type of inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied.~~

~~6.2.13. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of the underlying encumbrance.~~

~~6.2.14. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples:~~

~~(a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person;~~

~~(b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts;~~

~~(c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents;~~

~~(d) Placing brokerage signs on listed properties;~~

~~(e) Having keys made for listed properties; and~~

~~(f) Securing public records from the County Recorders' Offices, zoning offices, sewer districts, water districts, or similar entities.~~

~~6.2.14.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who~~

~~have assisted in transactions by performing the services listed in this rule.~~

~~6.2.14.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license.~~

~~6.2.14.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in R162-6.2.14.(a) above.~~

~~6.2.15. Fiduciary Duties. A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal:~~

~~6.2.15.1. Duties of a seller's or lessor's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties:~~

~~(a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own;~~

~~(b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor;~~

~~(c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction;~~

~~(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations;~~

~~(e) Reasonable care and diligence;~~

~~(f) Holding safe and accounting for all money or property entrusted to the agent; and~~

~~(g) Any additional duties created by the agency agreement.~~

~~6.2.15.2. Duties of a buyer's or lessee's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties:~~

~~(a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own;~~

~~(b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee;~~

~~(c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations;~~

~~(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform;~~

- ~~_____ (e) Reasonable care and diligence;~~
- ~~_____ (f) Holding safe and accounting for all money or property entrusted to the agent; and~~
- ~~_____ (g) Any additional duties created by the agency agreement.~~

~~_____ 6.2.15.3. Duties of a limited agent. A principal broker and a licensee acting on the principal broker's behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to buyer, or to lessor and lessee, are inherently contradictory. A principal broker and a licensee acting on the principal broker's behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained.~~

~~_____ 6.2.15.3.1. In order to obtain informed consent, the principal broker or a licensee acting on the principal broker's behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties:~~

~~_____ (a) The principal broker or a licensee acting on the principal broker's behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality;~~

~~_____ (b) The principal broker or a licensee acting on the principal broker's behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and~~

~~_____ (c) The principal broker or a licensee acting on the principal broker's behalf shall explain to the buyer and seller, or lessor and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.~~

~~_____ (d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent.~~

~~_____ 6.2.15.3.2. In addition, a limited agent owes the following fiduciary duties to all parties:~~

~~_____ (a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality;~~

~~_____ (b) Reasonable care and diligence;~~

~~_____ (c) Holding safe all money or property entrusted to the limited agent; and~~

~~_____ (d) Any additional duties created by the agency agreement.~~

~~_____ 6.2.15.4. Duties of a sub-agent. A principal broker and a licensee acting on the principal broker's behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal.~~

~~**KEY: real estate business**~~

~~**Date of Enactment or Last Substantive Amendment: November 23, 2009**~~

~~**Notice of Continuation: April 18, 2007**~~

~~**Authorizing, and Implemented or Interpreted Law: 61-2-5.5]**~~

Commerce, Real Estate R162-7 Enforcement

NOTICE OF PROPOSED RULE (Repeal)

DAR FILE NO.: 34200
FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

♦ **LOCAL GOVERNMENTS:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

♦ **SMALL BUSINESSES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Where the substantive provisions of this rule are incorporated

into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
REAL ESTATE
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:

♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~R162-7. Enforcement.~~

~~R162-7-1. Filing of Complaint.~~

~~7.1. An aggrieved person may file a complaint in writing against a licensee; or the Division or Commission may initiate an investigation for an alleged violation of the provisions of these rules or of Utah Code Annotated Section 61-2-1, et seq. The Division may only entertain a complaint between licensees regarding commissions if the complaint alleges, or the Division suspects, a specific violation of Utah Code Annotated Section 61-2-11 or Section R162-6-1.~~

~~R162-7-2. Notice or Complaint.~~

~~7.2. When the Division notifies a licensee of a complaint against the licensee, or when the Division notifies a licensee that it needs information from the licensee, the licensee must respond to the notice in the manner specified in the notice within ten business days after receipt of the notice from the Division. Failure to respond to a notice or complaint or to any subsequent requests for information from the Division within the required time period will be considered an additional violation of these rules and separate grounds for disciplinary action against the licensee.~~

~~R162-7-3. Investigation and Enforcement.~~

~~7.3. The investigative and enforcement activities of the Division shall include the following: investigation of information provided on new license applications and applications for license renewal; evaluation and investigation of complaints; auditing licensees' business records, including trust account records; meeting with complainants, respondents, witnesses and attorneys; making recommendations for dismissal or prosecution; preparation of cases for formal or informal hearings, restraining orders or injunctions; working with the assistant attorney general and representatives of other state and federal agencies; and entering into proposed stipulations for presentation to the Commission and the director.~~

~~R162-7-4. Corrective Notice.~~

~~7.4. In addition to disciplinary action under Section 61-2-11, the Division may give a licensee written notice of specific violations of these rules and may grant a licensee a reasonable period of time, not exceeding 30 days, to correct a defect in that licensee's practices or operations. The licensee's failure to correct the defect within the time granted shall constitute separate grounds for disciplinary action against the licensee. The Division is not required to give a corrective notice and allow an opportunity to correct a defect before it may commence disciplinary action against a licensee.~~

~~KEY: real estate business~~

~~Date of Enactment or Last Substantive Amendment: June 22, 2009~~

~~Notice of Continuation: April 19, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 61-2-5.5]~~

Commerce, Real Estate R162-8 Prelicensing Education

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34201

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.
- ◆ **LOCAL GOVERNMENTS:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.
- ◆ **SMALL BUSINESSES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
 REAL ESTATE
 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:

- ◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~**[R162-8. Prelicensing Education.**~~

~~**R162-8-1. School Application for Certification.**~~

~~8.1 Prelicense education credit shall be given to students only for courses provided by schools that are certified by the Division at the time the courses are taught. Applicants shall apply for school certification by submitting all forms and fees required by the Division not less than 90 days prior to a course being taught. Applications shall include at minimum the following information which will be used in determining approval:~~

~~8.1.1 Name, phone number and address of the school, the school director, and all owners of the school;~~

~~8.1.1.1 The school director shall obtain approval of the school name from the Division prior to registering that name with the Division of Corporations and Commercial Code in the Department of Commerce as a real estate education provider.~~

~~8.1.2 A description of the type of school and a description of the school's physical facilities;~~

~~8.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in any private residence.~~

~~8.1.3 A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of class time;~~

~~8.1.3.1 All courses of study shall meet the minimum standards set forth in the State of Utah Standard Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics.~~

~~8.1.3.2 The school director shall certify that all courses of study will meet the minimum hourly requirement of that course.~~

~~8.1.3.3 The school director shall certify that the school will not give a student credit for more than eight credit hours per day.~~

~~8.1.4 The name and certification number of each certified instructor and/or the name and resume documenting the knowledge and expertise of each guest lecturer who will teach the course;~~

~~8.1.4.1 A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division academic training or experience qualifying him to teach the course.~~

~~8.1.5 An identification of whether the method of instruction will be traditional education or distance education;~~

~~8.1.6. A school seeking certification of distance education prelicensing courses shall:~~

~~8.1.6.1 submit to the Division a complete description of all course delivery methods and all media to be used;~~

~~8.1.6.2 provide course access to the Division using the same delivery methods and media that will be provided to the students;~~

~~8.1.6.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;~~

~~8.1.6.4 describe how the students' achievement of the stated learning objectives will be measured at regular intervals;~~

8.1.6.5 describe how and when prelicense instructors will be available to answer student questions;

8.1.6.6 provide an attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

8.1.7 A copy of at least two final examinations of the course and the answer keys which are used to determine if the student has passed the exam, accompanied by an explanation of procedure if the student fails the final examination and thereby fails the course.

8.1.7.1 A maximum of 10% of the required class time may be spent in testing, including practice tests and the final examination. A student cannot challenge a course or any part of a course of study in lieu of attendance or active participation.

8.1.8 A list of the titles, authors and publishers of all required textbooks;

8.1.8.1 All texts, workbooks, supplements, and any other materials must be appropriate and current in their application to the required course outline.

8.1.9 Days, times and locations of classes;

8.1.9.1 A college or a university may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or other. A college quarter hour credit is the equivalent of 10 classroom hours, and a college semester hour credit is the equivalent of 15 classroom hours.

8.1.10 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy;

8.1.11 A copy of the statement which shall be provided to each student in capital letters no smaller than 1/4 inch containing the following language: "A student attending the (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for agents at this school;" and

8.1.12 Any other information as the Division may require.

R162-8-2. Determining Fitness for School Certification.

8.2 The Division, with the concurrence of the Commission, shall certify schools based on the honesty, integrity, truthfulness, reputation and competency of the school director and school owners.

R162-8-3. School Certification and Renewal.

8.3 The term of a school certification is twenty-four months. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification. School certifications not properly renewed shall expire on the expiration date.

8.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

8.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

8.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

R162-8-4. School Conduct and Standards of Practice.

8.4.1 In order to maintain good standing and renew a certification, a course sponsor shall:

8.4.1.1 teach the approved course of study as outlined in the State Approved Course Outline;

8.4.1.2 require each student to attend the required number of hours and pass a final examination;

8.4.1.3 maintain a record of each student's attendance for a minimum of three years after enrollment;

8.4.1.4 not accept a student for a reduced number of hours without first having a written statement from the Division which defines the exact number of hours the student needs;

8.4.1.5 not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the real estate profession. A school shall not make disparaging remarks about a competitor's services or methods of operation;

8.4.1.6 limit approved guest lecturers who are experts in related fields to a total of 20% of the instructional hours per approved course. A guest lecturer shall provide evidence of professional qualifications to the Division prior to being used as a guest lecturer;

8.4.1.7 within 15 calendar days after the occurrence of any material change in the school which would affect its approval, the school shall give the Division written notice of that change;

8.4.1.8 not attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

8.4.1.9 not give any valuable consideration to a real estate brokerage for having referred students to the school. A school shall not accept valuable consideration from a brokerage for having referred students to the brokerage;

8.4.1.9.1 If the school agrees, real estate brokerages may be allowed to solicit for agents at the school. No solicitation may be made during the class time nor during the student break time. Solicitation may be made only after the regularly scheduled class so that no student will be obligated to stay for the solicitation;

8.4.1.10 use only certified instructors or guest lecturers who have been registered with the Division;

8.4.1.11 provide the instructor with the approved content outline for each course and shall assure the content has been taught;

8.4.1.12 provide a course completion certificate in the form approved by the Division to each student upon the student's completion of the prelicensing course;

8.4.1.13 furnish to the Division a current roster of the school's approved instructors and guest lecturers. A school shall provide an updated roster to the Division each time there is a change in school instructors or guest lecturers;

8.4.1.14 give no more than eight credit hours per day to any student;

8.4.1.15 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall

provide a written disclosure to the prospective student stating: a) applicants for licensure must disclose any criminal history by answering a questionnaire as part of the pre-license exam; b) applicants for licensure must submit fingerprint cards to the Division and consent to a criminal background check; c) licenses issued by the Division are conditional pending the completion of the background check and that failure to accurately disclose a criminal history will result in an immediate and automatic license revocation; d) applicants with a criminal history described in subsection R162-2-2(2.2.9) do not qualify for a license; and e) applicants with a criminal history other than as described in subsection R162-2-2(2.2.9) will be considered on a case-by-case basis and may be required to appear at an administrative hearing to determine qualifications for licensure.

8.4.1.15.1 The school shall be required to obtain the student's signature on the written disclosure required by Section 8.4.1.15 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of three years following the date upon which the student completed the prelicensing course; and

8.4.2 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state statutes and administrative rules regarding school and instructor certification.

R162-8-5. Instructor Application for Certification.

8.5 An instructor shall not teach a prelicensing course without having been certified by the Division prior to teaching.

Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at minimum the following information which will be used in determining approval:

8.5.1 Name and certification number of the certified prelicensing school for which the applicant will work;

8.5.2 Evidence of a minimum educational level of graduation from high school or its equivalent;

8.5.3 Evidence of any combination of at least five years of full time experience and/or college-level education related to the course subject;

8.5.4 Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Division Instructor Development Workshops totaling at least two days in length; and

8.5.5 Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught;

8.5.6 To teach the sales agent prelicensing course, evidence of being a licensed sales agent or broker;

8.5.7 To teach the broker prelicensing course, evidence of being a licensed associate broker, branch broker, or principal broker;

8.5.7.1 An applicant may qualify to teach a subcourse of the broker prelicensing course by meeting the following criteria:

(a) Brokerage Management. The instructor applicant must be a licensed real estate broker and have managed a real estate office, or hold a CRB or equivalent professional designation in real estate brokerage management. The instructor applicant must have

at least two years practical experience as an active real estate principal broker.

(b) Advanced Real Estate Law. The instructor applicant must be a licensed real estate broker or be a current member of the Utah State Bar or have graduated from an American Bar Association accredited law school and have at least two years real estate law experience.

(c) Advanced Appraisal. The instructor applicant must be a licensed real estate broker, or be a state-licensed or state-certified appraiser.

(d) Advanced Finance. The instructor applicant must be a licensed real estate broker or have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

(e) Advanced Property Management. The instructor applicant must be a real estate licensee. The instructor applicant must have at least two years property management experience or hold a CPM or equivalent professional designation. The instructor applicant must have at least two years full-time experience as a property manager.

8.5.8 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

8.5.9 A signed statement agreeing not to market personal sales product; and

8.5.10 Any other information as the Division may require.

R162-8-6. Determining Fitness for Instructor Certification.

8.6 The Division, with the concurrence of the Commission, shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency.

R162-8-7. Instructor Certification Renewal.

8.7 The term of a prelicensing education instructor certification is twenty-four months. A certification may be renewed by submitting all forms and fees required by the Division prior to the certification's expiration date.

8.7.1 Certifications not properly renewed shall expire on the expiration date.

8.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

8.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.

8.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.

8.7.2 To renew an instructor certification an instructor shall, during the two years prior to renewal:

8.7.2.1 teach at least 20 hours of in-class instruction in a certified real estate course; and

8.7.2.2 attend an instructor development workshop sponsored by the Division.

~~KEY: real estate business~~

~~Date of Enactment or Last Substantive Amendment: April 7, 2008~~

~~Notice of Continuation: April 18, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 61-2-5.5]~~

Commerce, Real Estate **R162-9** Continuing Education

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34202

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ LOCAL GOVERNMENTS: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ SMALL BUSINESSES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
REAL ESTATE
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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~[R162-9. Continuing Education:~~

~~R162-9-1. Course Application for Certification.~~

~~9.1 Continuing education credit shall be given to students only for courses that are certified by the Division at the time the courses are taught. Course sponsors shall apply for course certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval:~~

~~9.1.1 Name and contact information of the course sponsor and the name of the entity through which the course will be provided;~~

~~9.1.2 A description of the physical facility where the course will be taught;~~

~~9.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in a private residence;~~

~~9.1.3 The title of the course;~~

~~9.1.4 The proposed amount of credit hours for the course;~~

~~9.1.4.1 A credit hour is defined as 50 minutes within a 60-minute time period;~~

~~9.1.4.2 The minimum length of a course shall be one credit hour;~~

~~9.1.5 A statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;~~

~~9.1.6 A course outline including, for each segment of no more than 15 minutes, a description of the subject matter;~~

9.1.7 A minimum of three learning objectives for every three hours of class time;

9.1.8 The name and certification number of each certified instructor who will teach the course;

9.1.9 Identification of whether the method of instruction will be traditional education or distance education;

9.1.9.1 A sponsor seeking certification of a distance education course shall:

9.1.9.1.1 submit to the Division a complete description of all course delivery methods and all media to be used;

9.1.9.1.2 provide course access to the Division using the same delivery methods and media that will be provided to the students;

9.1.9.1.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

9.1.9.1.4 describe how and when instructors will be available to answer student questions; and

9.1.9.1.5 provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

9.1.10 Copies of all materials to be distributed to the participants;

9.1.11 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

9.1.12 Except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

9.1.13 A sample of the completion certificate which shall bear the following information:

(a) A Space for the licensee's name, type of license and license number, date of course;

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date; and

(c) A Space for signature of the course sponsor and a space for the licensee's signature.

9.1.14 A signed statement agreeing not to market personal sales products;

9.1.15 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.1.16 A signed statement agreeing to upload, within 10 days after the end of a course offering, to the database specified by the Division, the course name, course certificate number assigned by the Division, the date the course was taught, the number of credit hours, and the names and license numbers of all students receiving continuing education credit;

9.1.16.1 A course sponsor is not responsible for uploading information for students who fail to provide an accurate name or license number registered with the Division.

9.1.16.2 Continuing education credit will not be given to any student who fails to provide to a course sponsor an accurate name or license number registered with the Division within 7 days of attending the course; and

9.1.17 Any other information as the Division may require.

R162-9-2. Determining Fitness for Course Certification.

9.2 The Division shall certify continuing education courses as either "core" or "elective" based on the course's intellectual and practical content and whether the course increases the licensee's competency, knowledge, professionalism and ability to protect and serve the public. The approval of courses is determined at the discretion of the Division. Course providers who have a course denied by the Division may appeal that decision to the Real Estate Commission.

9.2.1 Courses in the following subjects may be certified as "core": state approved forms/contracts, other industry used forms or contracts, ethics, agency, short sales or bank owned property sales, environmental hazards, property management, prevention of real estate and mortgage fraud, federal and state real estate laws or administrative rules, and brokers' trust accounts.

9.2.1.1 If a course regarding an industry used form or contract is approved by the Division as a "core" course, the provider of the course must:

(a) have ownership or written authorization to use the form(s) or contract(s) taught in the course; and

(b) have authority and grant permission to licensees for use of the form(s) or contract(s) used in the course by all licensees.

9.2.1.2 The owner of the form(s) or contract(s) may charge a reasonable fee for use of these form(s) or contract(s) by licensees.

9.2.2 Courses in the following subjects may be certified as "elective":

9.2.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; real estate market measures and evaluation; real estate appraising; market analysis, the measurement of homes or buildings, accounting and taxation as applied to real property; estate building and portfolio management for clients; settlement statements; real estate mathematics;

9.2.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; resort and recreational properties; farm and ranch properties; real property exchanging; legislative issues that influence real estate practice; real estate license law and administrative rules;

9.2.2.3 Land development; land use, planning and zoning; construction; energy conservation in buildings; water rights;

9.2.2.4 Landlord/tenant relationships; property disclosure forms;

9.2.2.5 Americans with Disabilities Act; Fair housing; affirmative marketing;

9.2.2.6 Commercial real estate; Tenants in Common;

9.2.2.7 Courses that focus on real estate concepts, principles, or industry practices or procedures, if the courses enhance licensee professional skills and thereby advance public protection and safety;

9.2.2.8 Professional development, business success, customer relation skills, or sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques related to real estate knowledge, servicing clients, communication skills;

9.2.2.9 Personal and property protection for licensees and their clients; and

~~9.2.2.10 Any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.~~

~~9.2.3 Non-acceptable course subject matter includes topics such as:~~

~~9.2.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, technology courses with a principal focus on technology operation, software design or use, or similar offerings;~~

~~9.2.3.2 Physical well-being, personal motivation, stress management, dress for success, or similar offerings;~~

~~9.2.3.3 Meetings held in conjunction with the general business of the licensee and his broker, employer or trade organization, such as sales meetings, in-house staff or licensee training meetings, or member orientation for professional organizations;~~

~~9.2.3.4 Courses in wealth creation or retirement planning for licensees; and~~

~~9.2.3.5 Courses that are specifically designed for exam preparation.~~

R162-9-3. Course Certification Renewal.

~~9.3 Course certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification. Certifications not properly renewed shall expire on the expiration date.~~

~~9.3.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.~~

~~9.3.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and payment of a non-refundable reinstatement fee.~~

~~9.3.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.~~

R162-9-4. Conduct and Standards of Practice.

~~9.4 In order to maintain good standing and renew a certification, a course sponsor shall:~~

~~9.4.1 Upon completion of a course offering, provide a certificate of completion, in the form required by the Division, to those students who attend a minimum of 90% of the required class time;~~

~~9.4.2 Maintain for three years a record of registration of each person completing an offering and any other prescribed information regarding the offering, including exam results, if any;~~

~~9.4.3 For distance education courses, give education credit only to students who complete the course within one year of the registration date;~~

~~9.4.4 Notify the Division in writing within 15 days of any material change in a certified course, for example, curriculum, course length, instructor, refund policy, etc.; and~~

~~9.4.5 Upon completion of a course offering, provide to each student a course evaluation, in the form required by the~~

~~Division, and submit the completed course evaluations to the Division within 10 days.~~

R162-9-5. Instructor Application for Certification.

~~9.5 Continuing education credit shall be given to students only for courses that are taught by an instructor who is certified by the Division at the time the courses are taught. Applicants shall apply for instructor certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval:~~

~~9.5.1 Name and contact information of the applicant;~~

~~9.5.2 Evidence of a minimum education level of graduation from high school or its equivalent;~~

~~9.5.3 Evidence of any combination of at least three years of full time experience and/or college-level education related to the course subject;~~

~~9.5.4 Evidence of at least twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at the Division's Instructor Development Workshops totaling at least two days in length;~~

~~9.5.5 A signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;~~

~~9.5.6 A signed statement agreeing not to market personal sales products; and~~

~~9.5.7 Any other information as the Division may require.~~

R162-9-6. Determining Fitness for Instructor Certification.

~~9.6 The Division with the concurrence of the Commission shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency.~~

R162-9-7. Instructor Certification Renewal.

~~9.7 Instructor certifications are valid for a period of two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification.~~

~~9.7.1 Certifications not properly renewed shall expire on the expiration date.~~

~~9.7.1.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.~~

~~9.7.1.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and paying a non-refundable reinstatement fee.~~

~~9.7.1.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.~~

~~9.7.2 To renew an instructor certification an instructor must teach, during the previous renewal period, a minimum of 12 continuing education credit hours.~~

~~9.7.2.1 If the instructor has not taught a minimum of 12 hours during the previous renewal period, written explanation outlining the reason for not meeting the requirement and satisfactory documentation of the applicant's present level of expertise shall be provided to the Division.~~

R162-9-8. Marketing of Continuing Education Courses.

~~9.8.1 A course sponsor may not advertise or market a continuing education course where Division continuing education course credit will be offered or provided to a licensed attendee unless the course:~~

~~(a) is approved and has been issued a current continuing education course certification number by the Division; and~~

~~(b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials.~~

~~9.8.2 A course sponsor may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming.~~

~~KEY: continuing education~~

~~Date of Enactment or Last Substantive Amendment: August 21, 2009~~

~~Notice of Continuation: April 18, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 61-2-5.5]~~

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Commerce, Real Estate
R162-10
 Administrative Procedures

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34203

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ LOCAL GOVERNMENTS: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ SMALL BUSINESSES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
 REAL ESTATE
 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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~[R162-10. Administrative Procedures.~~

R162-10-1. Formal Adjudicative Proceedings.

~~10.1. Any adjudicative proceeding as to the following matters shall be conducted as a formal adjudicative proceeding:~~

~~10.1.1. The revocation or suspension of any registration issued pursuant to the Time Share and Camp Resort Act, or the imposition of a fine against the registrant.~~

~~10.1.2. The revocation or suspension of any registration issued pursuant to the Utah Uniform Land Sales Practices Act, or the imposition of a fine against the registrant.~~

~~10.1.3. Any proceedings conducted subsequent to the issuance of cease and desist orders.~~

R162-10-2. Informal Adjudicative Proceedings.

~~10.2. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:~~

~~10.2.1. The issuance of a real estate license, the renewal of an active, inactive or expired license, or the activation of an inactive license.~~

~~10.2.2. Any action on a sales agent's license based upon the revocation or suspension of a principal broker's license or the failure of the principal broker to renew his license.~~

~~10.2.3. The issuance of renewal or certification of real estate schools or instructors.~~

~~10.2.4. The revocation of a real estate license due to payment made from the Real Estate Recovery Fund.~~

~~10.2.5. The issuance or renewal of registration pursuant to the Land Sales Practices Act.~~

~~10.2.6. The exemption from, or the amendment of, registration pursuant to the Land Sales Practices Act.~~

~~10.2.7. The issuance or renewal of any registration pursuant to the Time Share and Camp Resort Act.~~

~~10.2.8. Any waiver of, or exemption from, registration requirements pursuant to the Time Share and Camp Resort Act.~~

~~10.2.9. The issuance of any declaratory order determining the applicability of a statute, rule or order when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division of Real Estate.~~

~~10.2.10. The post-revocation hearing following the revocation of license pursuant to Utah Code Section 61-2-9(1)(c)(i) for failure to accurately disclose a criminal history.~~

~~10.2.11. A hearing on whether or not a licensee or certificate holder whose license or certificate was issued or renewed on probationary status has violated the condition of that probation.~~

~~10.2.12. Except as provided in Section 63G-4-502, a disciplinary action commenced by the Division following investigation of a complaint.~~

R162-10-3. Proceedings Not Designated:

~~10.3. All adjudicative proceedings as to any other matters not specifically listed herein shall be conducted on an informal basis.~~

R162-10-4. Hearings Required in Informal Adjudicative Proceedings.

~~10.4.1 A post-revocation hearing will be held if a licensee whose license has been automatically revoked pursuant to U.C.A. Section 61-2-9(1)(c)(i) files a timely request for a hearing to challenge the revocation.~~

~~10.4.2 Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2-12 following investigation of a complaint by the Division.~~

R162-10-5. Procedures for Hearings in All Informal Adjudicative Proceedings.

~~10.5.1 The procedures to be followed in all informal adjudicative proceedings shall be as set forth in Title 63G, Chapter 4, Utah Administrative Procedures Act, the Department of~~

~~Commerce Administrative Procedures Act Rules, Utah Administrative Code Section R151-46b, and in this Section R162-10-5.~~

~~10.5.2 Assistance of Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge or any request for assistance from an Administrative Law Judge shall be in writing.~~

~~10.5.3 Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63G, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft documents, attorney/client communications, materials containing an attorney's work product, materials containing the investigators' thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information it has already provided to that party.~~

~~10.5.4 Intervention. Intervention is prohibited.~~

~~10.5.5 Notice of hearing. Upon the scheduling of a hearing by the Division, the Division shall mail written notice of the date, time, and place scheduled for the hearing. If the respondent in a proceeding commenced by the Division is an actively licensed sales agent or associate broker, the Division shall mail a copy of the notice of hearing to the principal broker with whom the respondent is licensed.~~

~~10.5.6 Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63G, Chapter 4, the Utah Administrative Procedures Act or Title 52, Chapter 4, the Open and Public Meetings Act.~~

~~10.5.7 Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting them. The party who has requested that a witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, and the witness fee and mileage to be paid to the witness.~~

~~10.5.8 Representation by counsel. The respondent in a proceeding commenced by the Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.~~

~~10.5.9 Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to the proceeding, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the proceedings.~~

~~10.5.10 Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting a review. The Order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly mailed or delivered to each of the parties.~~

R162-10-6. Additional Procedures for Disciplinary Proceedings Commenced by the Division.

~~10.6 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2-12 following the investigation by the Division of a complaint:~~

~~10.6.1 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division.~~

~~10.6.2 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2-12 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition.~~

~~10.6.3 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition.~~

~~10.6.3.1 Contents of Witness List. A Witness List shall contain the name, address, and telephone number of each witness the party intends to call to testify at the hearing, and a summary of the testimony expected from the witness.~~

~~10.6.3.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits.~~

~~10.6.4 Pre-hearing Motions. Any pre-hearing motion permitted by Utah Administrative Code Section R151-46b, the Department of Commerce Administrative Procedures Act Rules, shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions.~~

KEY: real estate business

Date of Enactment or Last Substantive Amendment: June 21, 2006

Notice of Continuation: September 27, 2010

Authorizing, and Implemented or Interpreted Law: 61-2-5.5; 63G-4-102(5)]

Commerce, Real Estate R162-11 Undivided Fractionalized Long-Term Estates

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34204

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R162-2f. Therefore, this rule is no longer needed. (DAR NOTE: The proposed new Rule R162-2f is under DAR No. 34191 in this issue, November 15, 2010, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-307(1)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to the state budget is anticipated from this filing.

◆ **LOCAL GOVERNMENTS:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to local governments is anticipated from this filing.

◆ **SMALL BUSINESSES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to small businesses is anticipated from this filing.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Where the substantive provisions of this rule are incorporated into the proposed new Rule R162-2f, no fiscal impact to affected persons is anticipated from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division and commission relieve affected persons of any obligation to comply with it. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R162-2f proposed by the Division.

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

COMMERCE
REAL ESTATE
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:

♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-11. Undivided Fractionalized Long-Term Estates.

R162-11-1. Authority and Definitions.

11.1.1 The following administrative rules are promulgated under the authority granted by Sections 61-2-5.5 and 61-2-26.

11.1.2 Terms used in these rules are defined as follows:

(a) "Affiliate" means an individual or entity that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, a specified individual or entity.

(b) "Entity" means any corporation, limited liability company, general or limited partnership, company association, joint venture, business trust, trust, or other organization.

(c) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(d) "Undivided fractionalized long-term estate" is defined as in Section 61-2-2.

R162-11-2. Marketing Disclosures.

11.2.1 All real estate licensees who market an undivided fractionalized long-term estate shall obtain from the sponsor, and shall provide to purchasers in the form of written disclosures provided in a reasonable amount of time in advance of closing to allow adequate review by the purchaser, the following information:

11.2.1.1 Information concerning the sponsor and the sponsor's affiliates:

(a) The financial strength of the sponsor and all affiliates, as evidenced by current certified financial statements and current credit reports, and information concerning any bankruptcies or civil suits;

(b) Whether any affiliate of the sponsor is a third party service provider in the transaction, including mortgage brokers, mortgage lenders, loan originators, title service providers, attorneys, appraisers, document preparation services, providers of credit reports, property condition inspectors, settlement agents, real estate

brokers or other marketing agents, insurance providers, and providers of any other services for which the investor will be required to pay:

(c) Whether any affiliate of the sponsor is a master lease tenant or whether the sponsor is an affiliate of any master lease tenant.

(d) Any use that will be made of purchaser proceeds.

11.2.1.2 Information concerning the real property in which the undivided fractionalized long-term estate is offered:

(a) Material information concerning any leases or subleases affecting the real property;

(b) Material information concerning any environmental issues affecting the real property;

(c) A preliminary title report on the real property;

(d) If available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;

(e) If applicable, rent rolls and operating history;

(f) If applicable, loan documents;

(g) The Tenants in Common agreement, or any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;

(h) All third party reports acquired by the sponsor;

(i) A narrative appraisal report, with an effective date no more than 6 months prior to the date the offer of sale is made, that includes at minimum pictures, type of construction, age of building, and site information such as improvements, parking, cross easements, site and location maps;

(j) All material information concerning the market conditions for the property class; and

(k) All material information concerning the demographics of the general market area.

11.2.1.3 Information concerning the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered:

(a) Contact information for any existing or recommended asset managers and property managers;

(b) Any relationship between the asset managers and the sponsor;

(c) Any relationship between the property managers and the sponsor; and

(d) Copies of any existing asset management agreements and any property management agreements.

11.2.2 All real estate licensees who market an undivided fractionalized long-term estate that is subject to a master lease shall obtain from the sponsor and provide to purchasers in a reasonable amount of time in advance of closing to allow adequate review by the purchaser, financial statements of the master lease tenant, audited according to generally accepted accounting principles. If the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, then the financial statements of the owners of that entity shall be furnished.

11.2.3 All real estate licensees who market an undivided fractionalized long-term estate shall, in a reasonable amount of time in advance of closing to allow adequate review by the purchaser:

(a) disclose in writing to purchasers:

(i) that there may be tax consequences for a failure to close on the purchase;

(ii) that there may be risks involved in the purchase; and

~~_____ (b) shall advise purchasers that they should consult with tax advisors and other professionals for advice concerning these matters.~~

~~**R162-11-3. Regulation D Offerings.**~~

~~_____ 11.3 The Division and the Commission shall consider any offering of a fractionalized undivided long term estate in real property that is compliant with Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 230.506 to be in compliance with these rules.~~

~~**KEY: tenants-in-common interests**~~

~~**Date of Enactment or Last Substantive Amendment: October 19, 2006**~~

~~**Authorizing, and Implemented or Interpreted Law: 61-2-26]**~~

**Financial Institutions, Administration
R331-26
Ownership of Real Estate Other Than
Property Used for Institution Business
or Held as an Investment by Depository
Institutions Subject to the Jurisdiction of
the Department of Financial Institutions**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 34207

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the current economic downturn, depository institutions are now experiencing a greater number of foreclosures and acquiring portfolios of Other Real Estate Owned (OREO) property. It is important to provide regulatory standards for safe and sound management of OREO. The Department has concluded that it would be beneficial to have a uniform rule for all depositories under its jurisdiction.

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule is to protect the safety and soundness of state-chartered depository institutions by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the depository institution's business. The rule sets forth uniform regulatory standards for the safe and sound management of OREO by depositories under the jurisdiction of the Department of Financial Institutions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-1-301 and Section 7-3-18 and Section 7-8-13 and Section 7-9-5

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates FASB Accounting Standards Codification, published by Financial Foundation, 10/31/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The proposed new rule will not require additional appropriations because it incorporates requirements from existing rules and will not add an additional burden for enforcement by the Department.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not involved in regulating depository institutions and are therefore not subject to this rule.
- ◆ **SMALL BUSINESSES:** Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under generally accepted accounting principles (GAAP) and compliance to the rule should have minimal budgetary impact.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the rule should have minimal budgetary impact.

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

FINANCIAL INSTITUTIONS
ADMINISTRATION
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2011

AUTHORIZED BY: Edward Leary, Commissioner

R331. Financial Institutions, Administration.

R331-26. Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.

R331-26-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301, 7-3-18, 7-8-13, and 7-9-5.

(2) This rule applies to all depository institutions chartered by the State of Utah.

(3) The purpose of this rule is to protect the safety and soundness of state-chartered depository institutions by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the depository institution's business.

R331-26-2. Definitions.

For the purposes of this rule:

(1) A "covered transaction" is a sale of a parcel of other real estate held by a depository institution where less than 10% of the total sales price is in cash; where the depository institution finances all or a portion of the sales price on terms more favorable than those customarily offered by the depository institution at that point in time when acting solely as lender; or where the transaction does not transfer from the depository institution to the buyer substantially all of the usual risks and benefits of ownership. A transaction ceases to be covered when all of the aforementioned conditions no longer apply. It will be deemed that 10% of the sales price has been paid in cash when the cash received by the depository institution as a down payment together with that portion of the sales price guaranteed to the depository institution by private mortgage insurance or an equivalent guarantee equals or exceeds 10% of the total sales price, or when the unpaid principal balance of any debt to the depository institution resulting from a covered transaction, less the amount of any private mortgage insurance or equivalent guarantee, falls below 90% of the total sales price.

(2) "Depository institution" means depository institution as defined in Section 7-1-103.

(3) "Fair value" is the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale. A fair sale means that buyer and seller are each acting prudently, knowledgeably and under no necessity to buy or sell. Any related appraisal should estimate the cash price that might be received upon exposure to the open market for a reasonable time, considering the property type and local market conditions. When it is unlikely that the sale can be completed within 12 months, the appraisal must discount all cash flows generated by the property to obtain the estimate of fair values. These cash flows include those arising from ownership, development, operation, and sale of the property. The discount applied shall reflect the appraiser's judgment

of what a prudent, knowledgeable purchaser under no necessity to buy would be willing to pay to purchase the property in a current sale.

(4) "Other real estate" means all real property held by a depository institution except premises and real property acquired and held as a permitted investment.

(5) "Premises" means real property recorded as an asset on a depository institution's books or otherwise held by a depository institution which is used in the conduct of the depository institution's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future use where the minutes of the board of directors show the depository institution in good faith intends to utilize such property in the conduct of the depository institution's business within three years.

(6) The "recorded investment in the debt satisfied" is the unpaid balance of the debt, accrued and uncollected interest, any legal fees or direct costs of acquiring title to the property, unamortized premium and loan acquisition costs, if any, less any prior direct writedowns, unamortized discount, and finance charges.

(7) "Supervisor" means the appropriate supervisor within the Department of Financial Institutions.

R331-26-3. Purchasing, Holding, and Conveying Other Real Estate.

A state chartered depository institution may purchase, hold, and convey other real estate which is:

(1) taken to satisfy, in whole or part, a debt previously contracted;

(2) purchased at a sale to foreclose a lien or other security interest claimed by the depository institution in the property;

(3) former premises or property originally acquired for use by the depository institution but no longer used or intended to be used as such within the next three years; or

(4) real property sold by a depository institution in a covered transaction after the effective date of this rule.

R331-26-4. Limitations on the Holding of Other Real Estate.

(1) A depository institution may not hold any parcel of other real estate for a period longer than five years from the date title is transferred to the institution without the prior written approval of the appropriate supervisor.

(2) A depository institution may expend funds for the development and improvement of other real estate if the board of directors of the depository institution has determined there is a reasonable likelihood that the expenditure will increase the depository institution's recovery from sale or other disposition of the property in an amount greater than the total amounts to be expended, and the depository institution's interest in the property is otherwise sufficient to justify the expenditure. These requirements shall not apply to expenditures for routine repair and maintenance of the property nor to expenditures not exceeding \$100,000 or 5% of the gross value of the property, whichever is less.

(3) A depository institution may assume or pay superior liens on other real estate if the depository institution's interest in the property is sufficient to justify such expenditure.

(4) A depository institution must diligently pursue all reasonable means to dispose of each parcel of other real estate and shall maintain a current record of all such efforts.

(5) Each parcel of other real estate will be accounted for at the lower of the recorded investment in the debt satisfied or its fair value on the date the property was transferred to other real estate. Any excess of the recorded investment in the debt satisfied over the fair value of the property must be charged against the reserve for loan losses.

(6) Real estate no longer used for depository institution business will be accounted for at the lower of its net book value or its fair value at the date of transfer to other real estate owned. Any excess of net book value over fair value shall be charged to expense for the current period.

(7) For each parcel of other real estate where the recorded investment in the loan satisfied is in excess of 5% of the equity capital or net worth of the depository institution or \$250,000, whichever is less:

(a) prior to transfer to other real estate, fair value must be established by an appraisal prepared by an independent, qualified appraiser, and

(b) the depository institution must obtain annually from an independent qualified appraiser an appraisal, an updated appraisal, or an evaluation of the current fair value of each parcel of other real estate.

R331-26-5. Covered Transactions Authorized by Commissioner.

The commissioner authorizes any covered transaction to be booked as a receivable in accordance with Financial Accounting Standards Board Accounting Standards Codification 360.20, Real Estate Sales, 10/31/2009, which is incorporated by reference.

KEY: financial institutions, real estate, real estate investing

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 7-1-301, 7-3-18, 7-8-13, 7-9-5

**Financial Institutions, Banks
R333-11**

**Ownership by State-Chartered Banks
of Real Estate Other Than Property
Used for Bank Business or Held as an
Investment**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34206

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the current economic downturn, depository institutions are now experiencing a greater number of foreclosures and acquiring portfolios of Other Real Estate

Owned (OREO) property. It is important to provide regulatory standards for safe and sound management of OREO. The Department has concluded that it would be beneficial to have a uniform rule for all depositories under its jurisdiction. As a result, Rule R333-11 is being repealed and replaced with Rule R331-26. (DAR NOTE: The proposed new Rule R331-26 is under DAR No. 34207 in this issue, November 15, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R333-11, applicable to state-chartered banks, is being repealed in its entirety and replaced with new Rule R331-26. The purpose of the new rule is to protect the safety and soundness of all state-chartered depository institutions by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the depository institution's business. The rule sets forth uniform regulatory standards for the safe and sound management of OREO by depositories under the jurisdiction of the Department of Financial Institutions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-1-301 and Section 7-3-18

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The repeal of Rule R333-11 and the proposed new rule will not require additional appropriations.
- ◆ LOCAL GOVERNMENTS: Local governments are not involved in regulating depository institutions and are therefore not subject to this rule.
- ◆ SMALL BUSINESSES: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under generally accepted accounting principles (GAAP) and compliance to the new rule should have minimal budgetary impact.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the new rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the new rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the new rule should have minimal budgetary impact.

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

FINANCIAL INSTITUTIONS
BANKS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2011

AUTHORIZED BY: Edward Leary, Commissioner

R333. Financial Institutions, Banks.

~~[R333-11. Ownership by State Chartered Banks of Real Estate Other Than Property Used for Bank Business or Held as an Investment.~~

~~R333-11-1. Authority, Scope, and Purpose.~~

~~————(1) This rule is issued pursuant to Sections 7-1-301 and 7-3-18.~~

~~————(2) This rule applies to all banks chartered by the State of Utah.~~

~~————(3) The purpose of this rule is to protect the safety and soundness of state chartered banks by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the bank's business.~~

~~R333-11-2. Definitions.~~

~~————For the purposes of this rule:~~

~~————(1) "Bank premises" means real property recorded as an asset on a bank's books or otherwise held by a bank which is used in the conduct of the bank's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future banking use where the minutes of the board of directors show the bank in good faith intends to utilize such property in the conduct of the bank's business within three years.~~

~~————(2) A "covered transaction" is a sale of a parcel of other real estate held by a bank where less than 10% of the total sales price is in cash; where the bank finances all or a portion of the sales price on terms more favorable than those customarily offered by the bank at that point in time when acting solely as lender; or where the transaction does not transfer from the bank to the buyer substantially all of the usual risks and benefits of ownership. A transaction ceases to be covered when all of the aforementioned conditions no longer apply. It will be deemed that 10% of the sales price has been paid in cash when the cash received by the bank as a down payment together with that portion of the sales price guaranteed to the bank by private mortgage insurance or an~~

~~equivalent guarantee equals or exceeds 10% of the total sales price, or when the unpaid principal balance of any debt to the bank resulting from a covered transaction, less the amount of any private mortgage insurance or equivalent guarantee, falls below 90% of the total sales price.~~

~~————(3) "Fair value" is the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale. A fair sale means that buyer and seller are each acting prudently, knowledgeably and under no necessity to buy or sell. Any related appraisal should estimate the cash price that might be received upon exposure to the open market for a reasonable time, considering the property type and local market conditions. When it is unlikely that the sale can be completed within 12 months, the appraisal must discount all cash flows generated by the property to obtain the estimate of fair value. These cash flows include those arising from ownership, development, operation, and sale of the property. The discount applied shall reflect the appraiser's judgment of what a prudent, knowledgeable purchaser under no necessity to buy would be willing to pay to purchase the property in a current sale.~~

~~————(4) "Other real estate" means all real property held by a bank except bank premises and real property acquired and held as a permitted investment.~~

~~————(5) The "recorded investment in the debt satisfied" is the unpaid balance of the debt, accrued and uncollected interest, any legal fees or direct costs of acquiring title to the property, unamortized premium and loan acquisition costs, if any, less any prior direct writedowns, unamortized discount, and finance charges.~~

~~R333-11-3. Purchasing, Holding, and Conveying Other Real Estate.~~

~~————A state chartered bank may purchase, hold, and convey other real estate which is:~~

~~————(1) taken to satisfy, in whole or part, a debt previously contracted;~~

~~————(2) purchased at a sale to foreclose a lien or other security interest claimed by the bank in the property;~~

~~————(3) former bank premises or property originally acquired for use as bank premises but no longer used or intended to be used as such within the next three years; or~~

~~————(4) real property sold by a bank in a covered transaction after the effective date of this rule.~~

~~R333-11-4. Limitations on the Holding of Other Real Estate.~~

~~————(1) A bank may not hold any parcel of other real estate for a period longer than five years from the date title is transferred to the bank without the prior written approval of the Supervisor of Banks.~~

~~————(2) A bank may expend funds for the development and improvement of other real estate if the board of directors of the bank has determined there is a reasonable likelihood that the expenditure will increase the bank's recovery from sale or other disposition of the property in an amount greater than the total amounts to be expended, and the bank's interest in the property is otherwise sufficient to justify the expenditure. These requirements shall not apply to expenditures for routine repair and maintenance of the property nor to expenditures not exceeding \$100,000 or 5% of the gross value of the property, whichever is less.~~

~~(3) A bank may assume or pay superior liens on other real estate if the bank's interest in the property is sufficient to justify such expenditure.~~

~~(4) A bank must diligently pursue all reasonable means to dispose of each parcel of other real estate and shall maintain a current record of all such efforts.~~

~~(5) Each parcel of other real estate will be accounted for at the lower of the recorded investment in the debt satisfied or its fair value on the date the property was transferred to other real estate. Any excess of the recorded investment in the debt satisfied over the fair value of the property must be charged against the reserve for loan losses.~~

~~(6) Real estate no longer used for banking business will be accounted for at the lower of its net book value or its fair value at the date of transfer to other real estate owned. Any excess of net book value over fair value shall be charged to expense for the current period.~~

~~(7) For each parcel of other real estate where the recorded investment in the loan satisfied is in excess of 5% of the equity capital of the bank or \$150,000, whichever is less:~~

~~(a) prior to transfer to other real estate, fair value must be established by an appraisal prepared by an independent, qualified appraiser, and~~

~~(b) the bank must obtain annually from an independent qualified appraiser an appraisal or a certification in letter form of the current fair value of each parcel of other real estate.~~

~~R333-11-5. Covered Transactions Authorized by Commissioner.~~

~~The commissioner may authorize any covered transaction to be booked as a receivable in accordance with Financial Accounting Standards Board Statement of Financial Accounting Standards No. 66, Accounting for Sales of Real Estate, which is incorporated by reference.~~

~~KEY: banks and banking, real estate, real estate investment~~

~~Date of Enactment or Last Substantive Amendment: 1995~~

~~Notice of Continuation: May 25, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 7-1-301; 7-3-18]~~

Financial Institutions, Industrial Loan
Corporations

R339-6

Rule Clarifying Industrial Loan
Corporation Investments

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34205

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the current economic downturn, depository institutions are now experiencing a greater number of foreclosures and acquiring portfolios of Other Real Estate Owned (OREO) property. It is important to provide regulatory standards for safe and sound management of OREO. The Department has concluded that it would be beneficial to have a uniform rule for all depositories under its jurisdiction.

SUMMARY OF THE RULE OR CHANGE: Rule R339-6, applicable to state-chartered industrial banks, is being amended by deleting provisions involving OREO. The removed provisions will be replaced with a new Rule R331-26. The purpose of the new rule is to protect the safety and soundness of all state-chartered depository institutions by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the depository institution's business. The rule sets forth uniform regulatory standards for the safe and sound management of OREO by depositories under the jurisdiction of the Department of Financial Institutions. (DAR NOTE: The proposed new Rule R331-26 is under DAR No. 34207 in this issue, November 15, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-8-13 and Section 7-8-14 and Subsection 7-1-301(8)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The deleted provisions of Rule R339-6 will be replaced by a proposed new rule and will not require additional appropriations.

♦ **LOCAL GOVERNMENTS:** Local governments are not involved in regulating depository institutions and are therefore not subject to this rule.

♦ **SMALL BUSINESSES:** Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under generally accepted accounting principles (GAAP) and compliance to the rule should have minimal budgetary impact.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Depository institutions, under the jurisdiction of the Department, are currently required to comply with minimum accounting standards for the treatment of OREO under GAAP and compliance to the rule should have minimal budgetary impact.

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

FINANCIAL INSTITUTIONS
INDUSTRIAL LOAN CORPORATIONS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/01/2011

AUTHORIZED BY: Edward Leary, Commissioner

R339. Financial Institutions, Industrial Loan Corporations.

R339-6. Rule Clarifying Industrial Loan Corporation Investments.

R339-6-3. Acceptable Investments for the Deposits and Other Funds of Industrial Loan Corporations.

(1) In the absence of a statute or rule to the contrary, an industrial loan corporation is unrestricted as to a percentage of its total capital being invested in the following:

(a) Cash, demand, or time deposits in a federally insured depository institution, or in deposits maintained directly with a federal reserve bank;

(b) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state or any of its political subdivisions;

(c) Any investment grade securities;

(d) Any securities purchased under agreements to resell;

(e) Leases, loans, or extensions of credit, whether unsecured or secured;

(f) Real estate contracts;

(g) Consumer and commercial installment sales contracts and security agreements;

(h) A subsidiary with the prior written approval of the commissioner upon finding that the subsidiary is primarily engaged in activities closely related to banking; or

(i) Such real estate as the industrial loan corporation may purchase at any sale, public or private, or which may be conveyed to the industrial loan corporation in satisfaction of or on account of

a debt previously contracted in the conduct of its business upon which it had a mortgage, trust deed, judgment, assignment, lien or other claim[; however:] as set forth in Rule R331-26.

~~[(i) Any real estate acquired under this section shall be sold within two years after the date of acquisition;~~

~~[(ii) If real estate acquired under this section is not sold within the two year period, it shall be charged off the books of the industrial loan corporation at the rate of 20% of the acquisition book value thereof each year commencing one year from the date of expiration of the two year period. The same shall be entirely charged off within five years from the expiration of the two year period.~~

~~[(j) Any other investment with the prior written approval of the commissioner.~~

(2) An industrial loan corporation is restricted to 50% of its total capital at any one time being invested in the following:

Premises used in the conduct of the business which include real property and any interest therein, property such as furniture, fixtures, and equipment for use in carrying on its own business and the stock, bonds, debentures, or other obligations of any subsidiary or affiliate having as its exclusive activity the ownership and management of the property or interests.

(a) The amount invested in premises may exceed 50% of total capital upon application and finding by the commissioner that the additional investment is necessary to promote the viability and stability of the industrial loan corporation;

(b) If the use of any of the premises for the conduct of business of the thrift institution is discontinued, the industrial loan corporation shall consider the real property as an investment under the 10% of total capital limitation cited in Section (3) below.

(3) An industrial loan corporation is restricted to 10% of its total capital at any one time being invested in real estate other than real estate used in the premises in the conduct of the business or real estate purchased or conveyed on account of a debt previously contracted. Such limited investment by an industrial loan corporation may include real estate or participation interests in real estate whether in partnership, joint venture or participation interest in the real estate for the purpose of producing income or for inventory and sale or for improvement, including the erection of buildings on the real estate for sale or rental purposes, and the industrial loan corporation may hold, sell, lease, operate or otherwise exercise the rights of any owner of any property.

(4) An industrial loan corporation is restricted to an aggregate of 20% of its total capital at any time being invested in any other "prudent investments" not specifically mentioned above, in Rule R339-6-3(1) through (3); provided however, that the aggregate of investments in any form in any one person made pursuant to this section shall not exceed 10% of total capital.

KEY: financial institutions

Date of Enactment or Last Substantive Amendment:
~~[1995]~~2010

Notice of Continuation: September 24, 2007

Authorizing, and Implemented or Interpreted Law: 7-1-301; 7-8-13; 7-8-14

Governor, Economic Development,
Pete Suazo Utah Athletic Commission
R359-1-501

Promoter's Responsibilities in
Arranging a Contest

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34182

FILED: 10/31/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change sets the minimum fee for events at \$200 based on attendance of less than 500 people.

SUMMARY OF THE RULE OR CHANGE: The cost to the Commission to regulate small events with an attendance of less than 200 people is the same as the cost to regulate events attended by more than 200 and less than 500 people. Due to ongoing budget cuts and increased percentage of small events, the Commission either will have to increase its base fee to regulate event or reduce the number of events it can sanction each year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The increased savings to the state budget is estimated at \$4,000 per year, based on 40 small events with an attendance of less than 200 people per year.

◆ **LOCAL GOVERNMENTS:** Since local government does not regulate unarmed combat, there will be not cost or savings impact.

◆ **SMALL BUSINESSES:** For a promoter holding an event attended by less than 200 people, the event fee will increase \$100. Since there are an estimated 40 small events per year that are attended by less than 200 people, the total aggregate annual increase in cost to small businesses statewide is \$4,000.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** For a promoter holding an event attended by less than 200 people, the event fee will increase \$100. Since local government entities do not regulate unarmed combat, there is no cost or savings impact to them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For a promoter holding an event attended by less than 200 people, the event fee will increase \$100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Regulating small events is costly to the Commission and these costs are not significantly different for events attended by less than 200 people verses events attended by less than 500 people. With ongoing budget cuts, the Commission has to recover some of these costs or further limit the number of sanctioned events.

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

GOVERNOR
ECONOMIC DEVELOPMENT,
PETE SUAZO UTAH ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-501. Promoter's Responsibilities in Arranging a Contest.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of \$10,000.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the funds necessary for payment of contestants, referees, judges, timekeeper and the attending physician(s). The designated Commission member shall pay each contestant, referee, and judge in the presence of one witness. Payment for the attending physician(s) shall be made by the commission by the State of Utah.

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of \$10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible, for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter should provide life insurance coverage of \$10,000 for each contestant in case of death.

(11) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

~~[(a)(i) \$100 for a contest or event occurring in a venue of fewer than 200 attendees;~~

~~_____](a)(i[~~i~~]) \$200 for a contest or event occurring in a venue of [at least 200 attendees but] fewer than 500 attendees;~~

(ii[~~i~~]) \$300 for a contest or event occurring in a venue of at least 500 attendees but fewer than 1,000 attendees;

(iii[~~v~~]) \$400 for a contest or event occurring in a venue of at least 1,000 attendees but fewer than 3,000 attendees;

(iv) \$600 for a contest or event occurring in a venue of at least 3,000 attendees but fewer than 5,000 attendees;

(v[~~i~~]) \$1000 for a contest or event occurring in a venue of at least 5,000 attendees but fewer than 10,000 attendees; or

(vi[~~ii~~]) \$2000 for a contest or event occurring in a venue of at least 10,000 attendees; and

(b) 3% of the first \$500,000, and one percent of the next \$1,000,000, of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than \$25,000.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

(i) a showcase event promoting a greater interest in contests in the state;

(ii) attraction of the optimum number of spectators;

(iii) costs of promoting and producing the contest or exhibition;

(iv) ticket pricing;

(v) committed promotions and advertising of the contest or exhibition;

(vi) rankings and quality of the contestants; and

(vii) committed television and other media coverage of the contest or exhibition.

(viii) contribution to a 501(c)(3) charitable organization.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [October 4], 2010

Notice of Continuation: May 10, 2007

Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

**Governor, Economic Development,
Pete Suazo Utah Athletic Commission
R359-1-502
Ringside Equipment**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 34181

FILED: 10/31/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change specifies the ringside equipment required to be provided by the promoter and eliminates ringside equipment provided by the Commission.

SUMMARY OF THE RULE OR CHANGE: The amendment will reflect the required ringside equipment that is traditionally provided by the promoter or contained in the unified rules adopted by the Association of Boxing Commissions (ABC).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The proposed amendment will not impact the state budget since the Commission has

traditionally provided the ringside equipment that is being deleted from the list.

◆ LOCAL GOVERNMENTS: The proposed amendment will not impact local governments since they are not involved in the regulation of unarmed combat.

◆ SMALL BUSINESSES: The proposed amendment reflects the required ringside equipment that is traditionally provided by the promoter and/or contained in the unified rules adopted by the ABC so consequently there will not be a significant impact on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment reflects the required ringside equipment that is traditionally provided by the promoter and/or contained in the unified rules adopted by the ABC so consequently there will not be a significant impact on small businesses, businesses or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment reflects the required ringside equipment that is traditionally provided by the promoter and/or contained in the unified rules adopted by the ABC so consequently there will not be a significant impact on small businesses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment reflects what is already in practice in the field and will have little or no impact on the cost of promoting events.

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

GOVERNOR
ECONOMIC DEVELOPMENT,
PETE SUAZO UTAH ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-502. Ringside Equipment.

(1) Each promoter shall provide all of the following:

(a) commission-approved gloves in whole, clean and in sanitary condition for each contestant;~~[(a) a sufficient number of buckets for use by the contestants;]~~

(b) stools for use by the seconds;

(c) rubber gloves for use by the referees, seconds, ringside physicians, and Commission representatives;

(d) a stretcher, which shall be available near the ring and near the ringside physician;

(e) a portable resuscitator with oxygen;

(f) an ambulance with attendants on site at all times when contestants are competing. Arrangements shall be made for a replacement ambulance if the first ambulance is required to transport a contestant for medical treatment. The location of the ambulance and the arrangements for the substitute ambulance service shall be communicated to the physician;

(g) seats at ringside for the assigned officials;

(h) seats at ringside for the designated Commission member;

(i) ~~[scales for weigh-ins, which the Commission shall require to be certified;]~~ring (cage) cleaning supplies, including bucket, towels and disinfectant;

~~[(j) a gong;~~

~~_____]~~[(k)j] a public address system;

~~[(h)k] a separate dressing room for each sex, if contestants of both sexes are participating;~~

~~[(m)l] a separate room for physical examinations;~~

~~[(n)m] a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;~~

~~[(o)n] adequate security personnel; and~~

~~[(p)o] sufficient bout sheets for ring officials and the designated Commission member.~~

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the county, city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms, ~~[and~~]for physical examinations ~~[and]or~~ weigh-ins.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [October 4], 2010

Notice of Continuation: May 10, 2007

Authorizing, Implemented, or Interpreted Law: 63C-11-101 et seq.

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Governor, Economic Development,
Pete Suazo Utah Athletic Commission
R359-1-511
Event Officials

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34180

FILED: 10/31/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment would base the minimum fee paid by the promoter for referees, judges, and timekeepers on the number of bouts and not on attendance and would allow ringside physicians to negotiate their own fees based on market conditions.

SUMMARY OF THE RULE OR CHANGE: The amendment would base the minimum fee paid by the promoter for referees, judges, and timekeepers on the number of bouts and not on attendance and would allow ringside physicians to negotiate their own fees based on market conditions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This wouldn't affect the state budget since the event promoter pays the fees for officials and the ringside physician(s).

◆ **LOCAL GOVERNMENTS:** This amendment will not affect local governments since they don't regulate unarmed combat or pay any fees to event officials.

◆ **SMALL BUSINESSES:** Depending on the number of bouts, the fees will go up or down and would not be dependent on the number of people attending the events. Officials' fees are not a significant percentage in the total cost of promoting events.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Officials' minimum payment will now be based on the number of bouts and not attendance. The fee schedule sets the minimum charge, officials are able to negotiate higher fees for larger events, based on market demand.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The minimum fee for a referee is \$100, for a judge is \$50, and timekeeper is \$35. The fees for judges and timekeepers increase to \$100 and \$50 for events with 5 or more bouts. The minimum fee for ringside physicians is being eliminated to meet market conditions, but should have little impact on the promoters.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Setting the minimum fees for event officials based on the number of bouts is a more equitable policy and is consistent with the level of effort required to support an event.

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

GOVERNOR
ECONOMIC DEVELOPMENT,
PETE SUAZO UTAH ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges, timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required to be in attendance, or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

(e) The promoter may select the event announcer.

(2) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(3) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(4) All ring officials assigned and directed by the Commission to be in attendance at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total fees set by the Commission for all officials whom the Commission directs to officiate in a contest or exhibition promoted by the promoter.

(7) Event Officials' Minimum Fee Schedule:

TABLE

[EVENT ATTENDANCE NUMBER OF BOUTS	REFEREE	JUDGE	TIMEKEEPER	PHYSICIAN
[0-500] 1-5	[\$50] \$100.00	[\$35] \$50.00	\$35.00	[\$300.00]
[501-4000] >5	\$100.00	[\$50] \$100.00	\$50.00	[\$350.00]
[4001-10000]	\$200.00	\$100.00	\$100.00	\$400.00
10001 AND ABOVE	\$400.00	\$200.00	\$200.00	\$500.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [October 4], 2010

Notice of Continuation: May 10, 2007

Authorizing, Implemented, or Interpreted Law: 63C-11-101 et seq.

**Governor, Economic Development,
 Pete Suazo Utah Athletic Commission
 R359-1-901
 "White-Collar Contests"**

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 34179
 FILED: 10/31/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change will modify the requirements for "White-Collar Contests" to protect the health and safety of the contestants and help ensure the legislative intent for these contests is maintained.

SUMMARY OF THE RULE OR CHANGE: The change will prohibit unarmed combat techniques, strikes and submissions that are prohibited under Amateur Mixed Martial Arts (MMA) rules adopted by the Commission in "White-Collar Contests". To ensure White-Collar Contests are not inappropriately being held at training facilities primarily as a means to circumvent commission regulations and not be considered unarmed combat events; admission fees, ticket, concession sales, and donations would be prohibited. As a means to facilitate contestant safety, a ringside physician would be required to attend all "White-Collar Contests".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This proposed rule changes will not result in any significant savings or cost impact to the state budget since the tasks will be accomplished within the existing commission budget since the commission does not expend significant state resources overseeing "White-Collar Contests".
- ◆ **LOCAL GOVERNMENTS:** This proposed rule changes will not result in any significant savings or cost impact to local governments since local governments do not regulate "White-Collar Contests".
- ◆ **SMALL BUSINESSES:** This proposed rule changes would have cost impacts to those few small businesses that are holding "White-Collar Contests" in lieu of meeting Commission requirements by hosting "White Collar Contests" in lieu of unarmed combat events that should be regulated by the Commission. The additional cost of holding a Commission sanctioned event, including medical insurance, ringside physician, ambulance, emergency medical technicians and officials may cost about \$2,000 per event. However, these costs would be offset by potential ticket, admission, concession, and sponsorship revenue.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule would provide additional safety to "White-Collar" Contestants by eliminating unarmed combat techniques, strikes and submissions that have a greater likelihood in resulting in injury to the participants, consistent with amateur MMA rules and by ensuring a ringside physician is present during the contests.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The additional cost to hold a "White-Collar" event if the rule is adopted for medical insurance is estimated to be about \$100 for each contest between two opponents, with an estimated cost of up to \$300 for a ringside physician.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While there will be a fiscal impact to businesses that hold "White-Collar Contests" in lieu of commission sanctioned events, the proposed rule will protect the health and safety of those participating in the events and ensure the legislative intent for "White-Collar Contests" is maintained and these contests are not used as a means to circumvent commission regulation and to conduct unarmed combat public events.

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

GOVERNOR
 ECONOMIC DEVELOPMENT,
 PETE SUAZO UTAH ATHLETIC COMMISSION
 324 S STATE ST
 STE 500
 SALT LAKE CITY, UT 84111
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-901. "White-Collar Contests".

Pursuant to Section 63C-11-302 (26), the Commission adopts the following rules for "White-Collar Contests":

(1) Contestants shall be at least 21 years old on the day of the contest.

(2) Competing contestants shall be of the same gender.

(3) The heaviest contestant's weight shall be no greater than 15 percent more than their opponent.

(4) A ringside physician (M.D. or D.O) must be present at the ringside or cageside during each bout and emergency medical response must be within 5 minutes to the training center venue.

(5) Ticket sales, admission fees and/or donations are prohibited.

(6) Concession sales are prohibited.

(7) No more than 4 bouts at an event on a single day are permitted.

(8) Knee strikes to the head to a standing or grounded opponent are prohibited.

(9) Elbow, forearm and triceps strikes to a standing or grounded opponent are prohibited.

(10) Strikes to the head of a grounded opponent are prohibited.

(11) All twisting leg submissions are prohibited.

(12) All spine attacks, including spine strikes and locks are prohibited.

(13) All neck attacks, including strikes, chokes and cranks are prohibited.

(14) Linear kicks to and around the knee joint are prohibited.

(15) Dropping your opponent on his or her head or neck at any time is prohibited.

(16) Medical insurance coverage for each contest participant that meets the requirements of R359-1-501(10) shall be provided at no expense to the contest participant.

(17) Full legal names, birthdates and addresses of all contestants shall be provided to the commission no later than 72 hours before the scheduled event.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [October 1], 2010

Notice of Continuation: May 10, 2007

Authorizing, Implemented, or Interpreted Law: 63C-11-101 et seq.

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-2A
 Inpatient Hospital Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34209

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify service limitations on hyperbaric oxygen therapy.

SUMMARY OF THE RULE OR CHANGE: This change clarifies service limitations on hyperbaric oxygen therapy and makes other minor corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this change only clarifies service limitations on hyperbaric oxygen therapy.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services.

♦ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this change only clarifies service limitations on hyperbaric oxygen therapy.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid clients and to Medicaid providers because this change only clarifies service limitations on hyperbaric oxygen therapy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid client or to a Medicaid provider because this change only clarifies service limitations on hyperbaric oxygen therapy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removal of the level restriction and the limitation that only

hospital based services are covered in the current rule should not have a negative fiscal impact on businesses serving Medicaid clients in need of hyperbaric care.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-2A. Inpatient Hospital Services.

R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under ~~[Utah Code]~~Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in Section R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness requires 24 hours or more of continuous care in a hospital.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-3. Client Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-2A-4. Hospital Admission Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

R414-2A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Diagnostic services performed by the admitting hospital or by an entity wholly owned or operated by the hospital within three days prior to the date of admission to the hospital, are inpatient services.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of [Utah Code]Section 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by Rule R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a [hospital] facility in which the hyperbaric unit is accredited [as a level one facility] by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10[, Physician Services].

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

R414-2A-8. Coinsurance.

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in Rule R414-1.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services. The provider manual lists appropriate emergency codes. The provider must list the discharge diagnosis on the claim form as one of the first five diagnoses.

(5) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, the Department may review and evaluate both claims to determine if, based on severity of illness and intensity of service, the claims should be combined into a single DRG payment or paid separately. Cost effectiveness may also be part of this determination but is not a primary factor.

(6) Exceptions to the 30-day readmission policy must still meet the severity of illness requirements for the allowance of a second DRG payment and are limited to:

(a) pregnancy;

(b) chemotherapy; and

(c) hyperbilirubinemia appearing in newborn infants within the first week of life.

(7) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(8) If an observation stay meets the intensity and severity for inpatient hospitalization and exceeds 24 hours, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~June 26, 2007~~]**2010**

Notice of Continuation: November 8, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-3.5

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-3A** Outpatient Hospital Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34210

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify service limitations on hyperbaric oxygen therapy.

SUMMARY OF THE RULE OR CHANGE: This change clarifies service limitations on hyperbaric oxygen therapy and makes other minor corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this change only clarifies service limitations on hyperbaric oxygen therapy.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services.
- ◆ SMALL BUSINESSES: The Department does not anticipate any impact to small businesses because this change only clarifies service limitations on hyperbaric oxygen therapy.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any impact to Medicaid clients and to Medicaid providers because this change only clarifies service limitations on hyperbaric oxygen therapy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid client or to a Medicaid provider because this change only clarifies service limitations on hyperbaric oxygen therapy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removal of the level restriction and the limitation that only hospital based services are covered in the current rule should not have a negative fiscal impact on businesses serving Medicaid clients in need of hyperbaric care.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-3A. Outpatient Hospital Services.

R414-3A-1. Introduction and Authority.

This rule defines the scope of outpatient hospital services available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under [Utah Code]Section 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

(1) "Allowed charges" mean actual charges submitted by the provider less any charges for non-covered services.

(2) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for children under the age of 21.

(3) "Clinical Laboratory Improvements Act" (CLIA) is the Centers for Medicare and Medicaid Services (CMS) program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(5) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(6) "Outpatient" means professional services provided for less than a 24-hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight.

(7) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-3A-3. Client Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-3A-4. Program Access Requirements.

(1) The Department reimburses for outpatient hospital services and supplies only if they are:

- (a) furnished in a hospital;
- (b) provided by hospital personnel by or under the direction of a physician or dentist;
- (c) provided as evaluation and management of illness or injury under hospital medical staff supervision and according to the written orders of a physician or dentist.

(2) All outpatient hospital services are subject to review by the Department.

R414-3A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for outpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of ~~[Utah Code]~~Section 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPST screening;

or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a ~~[hospital]~~ facility in which the hyperbaric unit is accredited ~~[as a level one facility]~~ by the Undersea and Hyperbaric Medical Society.

(11) Lithotripsy is covered by an all-inclusive fixed fee. This payment covers all hospital and ambulatory surgery-related services for lithotripsy on the same kidney for 90 days, including repeat treatments. Lithotripsy for treatment of the other kidney is a separate service.

(12) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services as described in the provider manual.

(13) Take home supplies and durable medical equipment are not reimbursable.

(14) Prescriptions are not a covered Medicaid service for a client with the designation "Emergency Services Only Program" printed on the Medicaid Identification Card.

R414-3A-7. Prior Authorization.

Prior authorization must be obtained on certain medical and surgical procedures in accordance with Section R414-1-14.

R414-3A-8. Copayment Policy.

Each Medicaid client is responsible for a copayment as established in the Utah ~~[State]~~ Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-3A-9. Reimbursement for Services.

Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[June 21], 2010~~

Notice of Continuation: November 8, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3(2); 26-18-4

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-7B
Nursing Assistant Training and
Competency Evaluation Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34211

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify terminology in the rule text to match federal verbiage, and to clarify other requirements for certified nursing assistants (CNAs) in the Nurse Aide Training and Competency Evaluation Program.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the term of "nursing assistant" to "nurse aide" to match verbiage in the federal statute. It also clarifies the renewal process and program access requirements for CNAs, the competency evaluation for CNAs, and training and

orientation requirements for CNAs. This amendment further clarifies the limitations of a Nurse Aide Training and Competency Evaluation Program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this change only clarifies the requirements of a CNA in a Nurse Aide Training and Competency Evaluation Program.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid programs or services.
- ◆ SMALL BUSINESSES: The Department does not anticipate any impact to small businesses because this change only clarifies the requirements of a CNA in a Nurse Aide Training and Competency Evaluation Program.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any fiscal impact to Medicaid providers, Medicaid clients, nursing facilities, and CNAs because this change only clarifies the requirements of a CNA in a Nurse Aide Training and Competency Evaluation Program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider, Medicaid client, nursing facility, or CNA because this change only clarifies the requirements of a CNA in a Nurse Aide Training and Competency Evaluation Program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes imposed by this rule are technical and not expected to have a fiscal impact.

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

HEALTH
HEALTH CARE FINANCING,
COVERGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-7B. ~~Nursing Assistant~~Nurse Aide Training and Competency Evaluation Program.

R414-7B-1. Introduction and Authority.

The ~~Nursing Assistant~~Nurse Aide Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100 203, 101 Stat. 1330, Sec. 4211,(b)(5)(A)(B)(C)(D)(E)(F)(G), (e)(1)(2), f(2)(A)(B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified ~~nursing assistant~~nurse aide (CNA) to provide quality nursing services to nursing facility residents.

R414-7B-2. Definitions.

(~~a~~)1 "Certified ~~Nursing Assistant~~nurse aide" means any person who completes a ~~UNAR-approved nursing assistant~~nurse aide training and competency evaluation program (NATCEP) and passes the state certification examination.

(~~b~~)2 "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a ~~nursing assistant~~nurse aide and a demonstration of the tasks the ~~nursing assistant~~nurse aide is expected to perform as part of the ~~assistant's~~aide's function.

(~~c~~) "Deemed competency" means that an individual is deemed to be competent if the individual completed a state-approved nursing assistant training program on or before July 1, 1989.

~~_____~~(~~d~~)3 "~~Nursing assistant~~Nurse aide" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.

(~~e~~)4 "~~Nursing Assistant~~Nurse Aide" Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified ~~nursing assistant in the state of Utah~~nurse aide.

(~~f~~)5 "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.

(~~g~~)6 "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.

(7) "Renewal" means a two-year renewal for a CNA who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(~~h~~)8 "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.

(~~i~~)9 "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within

the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.

([j]10) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.

([k]11) "Train-the-[i]Trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.

([H]12) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.

([m]13) "Utah Nursing Assistant Registry" means the state agency that approves ~~[nursing assistant]~~nurse aide training programs, monitors all UNAR test sites, maintains an abuse registry for all substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing, ~~[facility or]~~Medicare ~~[and]or~~ Medicaid facility, certifies ~~[nursing assistants]~~nurse aides who have completed a ~~[nursing assistant training program]~~NATCEP, and renews certifications of qualified CNAs.

R414-7B-3. Program Access Requirements.

(1) A ~~[nursing assistant]~~nurse aide is required to complete a ~~[UNAR-approved nursing assistant training program]~~NATCEP and become certified within 120 days of the first date of employment.

(2) An individual who was certified as a ~~[nursing assistant]~~nurse aide on or before July 1, 1989, ~~[is deemed to be competent and to have met]~~meets the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

(3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:

(a) a nursing student who has completed the first semester of nursing school within the past two years and to a current nursing student. An official transcript of a nursing fundamentals class must accompany the ~~[waiver request]~~Application for Certification Testing. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, ~~[she]the candidate~~ must complete a ~~[UNAR-approved nursing assistant training program]~~NATCEP;

(b) an expired licensed nurse who can show proof of previous licensure in any state and who was in good standing with ~~[her]that state's~~ professional board. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, ~~[she]the candidate~~ must complete a ~~[UNAR-approved nursing assistant training program]~~NATCEP.

(c) an expired Utah CNA who is in good standing with UNAR. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination within one year of the certification expiration date. If the candidate does not pass either portion, the candidate must ~~[complete a UNAR-approved nursing assistant training program]~~retrain;

(d) any out-of-state CNA ~~[deemed]~~who is certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in ~~[her]that other~~ state.

(4) An out-of-state expired CNA must complete a ~~[UNAR-approved nursing assistant training program]~~NATCEP in the state of Utah.

R414-7B-4. Competency Evaluation.

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to ~~[nursing assistants]~~nurse aides must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a ~~[nursing assistant]~~nurse aide, and a UNAR-approved representative must administer and evaluate the demonstration.

(b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved ~~[nursing assistant training program]~~NATCEP;

(d) UNAR ~~[must]~~shall advise an individual who takes the competency evaluation that a record of the outcome of the evaluation ~~[shall]~~will be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the ~~[nursing assistant's]~~nurse aide's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. ~~[The questions shall be developed]~~UNAR must develop this examination from a pool of test questions, only a portion of which ~~[shall be used]~~to use in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

([f]g) The competency evaluation must include a demonstration of the tasks the ~~[nursing assistant]~~nurse aide is expected to perform as part of the ~~[assistant's]~~nurse aide's function as a CNA;

([g]h) For the skills training component of the evaluation, UNAR shall establish a performance record for each ~~[nursing assistant training program]~~NATCEP of major duties and skills ~~[taught]~~ that include:

(i) a list~~[ing]~~ of the duties and skills that UNAR expects a CNA to learn in the program in accordance with ~~[Section-R414-7B-4]~~this section;

(ii) a record that documents when the ~~[nursing assistant]~~nurse aide performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

- (iv) the date of the performance; and
- (v) the instructor supervising the performance.

(2) At the completion of the ~~[nursing assistant training program, the]~~NATCEP, the NATCEP shall give ~~[nursing assistant]~~the nurse aide ~~[shall receive]~~a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation ~~[consists of a minimum performance of]~~must have at least five performance tasks, all of which are included in the performance record. UNAR shall select five tasks for each ~~[nursing assistant]~~nurse aide from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

R414-7B-5. [Nurse Assistant Training Program]Nurse Aide Training Requirements Under UNAR.

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a ~~[nursing assistant training program]~~NATCEP and all new instructors must be fingerprinted and have their records checked in state and national bureaus. Before receiving NATCEP approval, a ~~[nursing assistant training program]~~NATCEP must send a background check and fingerprinting to UNAR to be placed in the file of the proposed new training program.

(4) In accordance with ~~[Section R414-7B-5]~~this section, UNAR shall review and render a determination ~~[regarding]~~of approval or disapproval of any ~~[nursing assistant training program]~~NATCEP when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private ~~[nursing assistant training program]~~NATCEP.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a ~~[nursing assistant training program]~~NATCEP that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines ~~[designated]~~designated by the Department of Health, and all UNAR requirements.

- (a) UNAR shall admit a student who is 16 years of age and older on or before the first day that the student begins class; and
- (b) shall include an orientation to the training program.

(7) The ~~[nursing assistant]~~nurse aide training program must meet ~~[minimal]~~certain content requirements to be UNAR-approved.

(a) NATCEP must consist of ~~[no less than]~~at least 80 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

- (i) communication and interpersonal skills;
- (ii) infection control;
- (iii) safety and emergency procedures;
- (iv) promoting resident[s] independence;
- (v) respecting resident[s] rights; and
- (vi) basic nursing skills.

(c) The trainee must complete at least 16 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies ~~[prior to]~~before training in any facility. The skills training must ensure that each ~~[nursing assistant]~~nurse aide demonstrates competencies in the following areas:

(i) Basic nursing skills:

- (A) taking and recording vital signs;
- (B) measuring and recording height;
- (C) caring for residents' environment; and
- (D) recognizing abnormal signs and symptoms of common diseases and conditions.

(ii) Personal care skills:

- (A) bathing that includes mouth care;
- (B) grooming;
- (C) dressing;
- (D) using the toilet;
- (E) assisting with eating and hydration;
- (F) proper feeding techniques; and
- (G) skin care.

(iii) Basic restorative services:

(A) use of assistive devices in ambulation, eating, and dressing;

- (B) maintenance of range of motion;
- (C) proper turning and positioning in bed and chair;
- (D) bowel and bladder training;
- (E) care and use of prosthetic and orthotic devices; and
- (F) transfer techniques.

(iv) Mental Health and Social Service Skills:

(A) modifying ~~[her own]~~one's behavior in response to the resident's behavior;

(B) identifying developmental tasks associated with the aging process;

(C) training the resident in self-care according to the resident's ability;

(D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(F) using the resident's family as a source of emotional support.

(v) Resident's rights:

(a) providing privacy and maintaining confidentiality;

(b) promoting the resident's right to make personal choices to accommodate the resident's needs;

(c) giving assistance in solving grievances;

(d) providing needed assistance in getting to and participating in resident and family groups and other activities;

(e) maintaining care and security of resident's personal possessions;

(f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and

(g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.

(8) Qualification of Instructors:

(a) a ~~[nursing assistant training program]~~NATCEP must have a program coordinator who is a registered nurse with a current and active Utah license to practice;

(b) who is in good standing with DOPL;

(c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and

(d) must have at least three hours of documented consulting time per month with the respective program.

(9) Nursing facility-based programs:

(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements[-];

(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and

(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.

(10) Before approval of a ~~[nursing assistant training program]~~NATCEP, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach adult learners as defined by UNAR.

(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.

(12) Qualified personnel from the health professions may supplement the program coordinator ~~[or]~~and primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.

(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other ~~[appropriate and duly]~~qualified personnel.

(14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.

(15) A ~~[nursing assistant training program]~~NATCEP must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.

(16) A ~~[nursing assistant training program]~~NATCEP must provide a classroom with the following:

(a) adequate space and furniture for the number of students;

(b) adequate lighting and ventilation;

(c) comfortable temperature;

(d) appropriate audio-visual equipment;

(e) skills lab equipment to simulate a resident's unit;

(f) clean and safe environment; and

(g) appropriate textbooks and reference materials.

(17) Initial post-approval and ongoing reviews:

(a) After the initial approval of a ~~[nursing assistant training program]~~NATCEP, UNAR grants a one-year probationary period;

(b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;

(c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews at least every two years;

(d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;

(e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;

(f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation, UNAR must make an on-site visit within one year of the self-evaluation.

(18) The training and evaluation program review must include:

(a) skills training experience;

(b) maintenance of qualified faculty members for both classroom and skills portions of the ~~[nursing assistant]~~nurse aide training program;

(c) maintenance of the security of the competency evaluation examinations;

(d) a record of complaints received about the program;

(e) a record that each nursing facility has provided certified ~~[nursing assistants]~~nurse aides with at least 12 hours of staff development training ~~[per]~~each year with the compensation for the training;

(f) curriculum content that meets state and federal requirements; and

(g) classroom facilities and required equipment that meet state, federal, and UNAR requirements.

(19) In addition to the ~~[nursing assistant]~~nurse aide training that UNAR requires, ~~[all nursing assistants shall receive an orientation program from the nursing facility where they are employed, which is not included in the required 80 hours of training.]~~a nursing facility shall provide an orientation program for any nurse aide whom it employs. For a student who is not employed at a nursing facility, the NATCEP shall provide an orientation of the clinical site for that student prior to beginning the clinical rotation. The orientation hours are not included in the required 80 hours of training. This orientation phase ~~[shall]~~must include an explanation of:

(a) the organizational structure of the facility;

(b) the facility policies and procedures;

(c) the philosophy of care of the facility;

(d) the description of the resident population; and

(e) the employee rules.

R414-7B-6. Nurse Aide Registry.

(1) UNAR is the central registry for all certified ~~[nursing assistants]~~ nurse aides. This registry must ~~[include identification of]~~ identify all individuals who have successfully completed ~~[and passed]~~ a ~~[nursing assistant training program]~~ NATCEP with a passing score of 75.

(2) A ~~[nursing assistant training program]~~ NATCEP must report to UNAR, within five days ~~[of the completion date of]~~ after the program ends, the names of all individuals who ~~[have]~~ satisfactorily completed the [certified nursing assistant training] program.

(3) UNAR processes all renewals for each nurse aide who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

~~[(3)]~~ 4 The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.

~~[(4)]~~ 5 The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.

~~[(5)]~~ 6 After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate summary of the findings are placed in the abuse registry in accordance with UNAR protocol.

R414-7B-7. Limitations.

(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.

(2) UNAR must review and reapprove a ~~[nursing assistant training program]~~ NATCEP at least every two years.

(3) A skilled nursing facility that participates in a Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.

(4) A nursing facility may employ a ~~[nursing assistant]~~ nurse aide for more than 120 days only if the ~~[assistant]~~ aide has completed a ~~[nursing assistant training program]~~ NATCEP.

(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.

~~[(6)]~~ 6 A nursing assistant who does not perform paid services that total at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months that follow the completion date of the state approved nursing assistant training program or certification renewal, must retrain and repeat the skills and written examination.

~~[(7)]~~ 7 A candidate has one attempt to pass both the skills and written portion of the examination. If the candidate fails either portion of the examination, the candidate must complete a UNAR-approved nursing assistant training program.]

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[March 29], 2010~~

Notice of Continuation: October 20, 2009

Authorizing, and Implemented or Interpreted Law: ~~[26-1-4.1; 26-1-5; 26-18-3]~~

**Human Services, Administration,
Administrative Services, Licensing
R501-21
Outpatient Treatment Programs**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34212

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are necessary to address specific licensing requirements for opioid outpatient treatment programs. It also includes requirements for methadone treatment of clients in these programs.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule establish specific requirements for outpatient treatment of clients with a dependency on opioid drugs. It also provides a definition, staffing requirements, and direct service requirements for programs that provide treatment for opioid drug addictions, and which may include methadone treatment of clients.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62-A-2-101(22) and Subsection 62-A-2-106(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is anticipated that there will be some initial implementation costs associated with this rule in the way of development and printing of new checklists, and training of staff, but these costs can be absorbed in current budgets.

◆ **LOCAL GOVERNMENTS:** The proposed changes affects only seven treatment programs throughout the state. In meetings with the Administrators of these programs, and consultation with the Substance Abuse specialists within the Division of Substance Abuse and Mental Health it was determined that there will be no anticipated costs to local government as a result of this rule.

♦ **SMALL BUSINESSES:** There should be no cost to small business except for those listed below in "compliance costs for affected persons" and "comments by the department head on the fiscal impact the rule may have on businesses" below.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In meetings with the Administrators of the seven opioid treatment programs affected by this proposed rule, and consultation with substance abuse specialists within the Division of Substance Abuse and Mental Health it was determined that the minimal administrative costs to the programs to implement this rule should not impact the cost of the service for the client or the general public. Nevertheless, programs that do incur greater expenses may need to adjust client fees slightly to offset those costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Opioid treatment programs that are required to be licensed for outpatient treatment will experience some minimal administrative costs to modify or update policies and procedures manuals and record keeping procedures. There are both costs and savings anticipated in regard to the staffing requirements. Depending on the program it is possible to have some moderate cost increase as a result of staffing and training requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The businesses that may experience some mild fiscal impact as a result of these rules are the human services programs that will be licensed to provide outpatient opioid treatment services. Some of these businesses receive public funds through contracts with local authorities. Private non-contracted outpatient opioid treatment programs may need to adjust fees to off-set any additional costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 ADMINISTRATION, ADMINISTRATIVE SERVICES,
 LICENSING
 195 N 1950 W
 FIRST FLOOR
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Vilma Mosier by phone at 801-538-4041, by FAX at 801-538-4553, or by Internet E-mail at vmosier@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-21. Outpatient Treatment Programs.

R501-21-5. Staffing.

Professional staff shall include at least one of the following individuals who has received training in the specific area listed below:

A. Mental Health

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

5. If unlicensed staff are used, they shall not supervise clinical programs. Unlicensed staff shall be trained to work with psychiatric consumers and be supervised by a licensed clinical professional.

B. Substance Abuse

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

5. A licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

6. Opioid outpatient treatment programs shall have a licensed physician who is an American Society of Addiction Medicine certified physician or who can document specific training in methadone treatment for opioid addictions or who can document specific training or experience in methadone treatment for opioid addictions. Physicians prescribing buprenorphine must show proof of completion of 8 hour federally required physician training.

C. Children and Youth

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

5. If the following individuals are used they shall not supervise clinical programs: A person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or a second year graduate student training for one of the above degrees.

D. Domestic Violence

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed clinical social worker, or
4. a licensed marriage and family therapist, or
5. a licensed professional counselor, or
6. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or

7. a person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or

8. a second year graduate student in training for one of the above degrees, or

9. a licensed social services worker with at least three years of continual, full time, related experience, when practicing under the direction and supervision of a licensed clinical professional.

10. Individuals from categories 7. and 8. above shall not supervise clinical programs. Individuals in category i. above shall not supervise clinical programs, and may only co-facilitate group therapy sessions with a person qualified per paragraphs 1. through 6. above.

R501-21-6. Direct Service.

A. Treatment plans shall be developed based on assessment and evaluation of individual consumer needs. The treatment may be consultive and may include medication management.

B. Treatment plans shall be reviewed and signed by a licensed clinical professional as frequently as determined in the treatment plan.

C. Except for Domestic Violence, individual, group, couple, or family counseling sessions shall be provided to the consumer as frequently as determined in the treatment plan. In the consumer's record and in the progress notes, the date of the session and the provider shall be documented. Treatment sessions may be provided less frequently than once a month if approved by the clinical supervisor and justified in the consumer record.

D. Domestic violence treatment programs shall comply with generally accepted practices in the current domestic violence literature and the following requirements:

1. Maintain and document cooperative working relationships with domestic violence shelters, treatment programs, referring agencies, custodial parents when the consumer is a minor and local domestic violence coalitions. If the consumer is a perpetrator, contact with victims, current partner, and the criminal justice referring agencies is also required, as appropriate.

2. Treatment sessions for each perpetrator, not including orientation and assessment interviews, shall be provided for at least one hour per week for a minimum of sixteen weeks. Treatment sessions for children and victims shall offer a minimum of 10 sessions for each consumer not including intake or orientation.

3. Staff to Consumer Ratio:

a. The staff to consumer ratio in adult treatment groups shall be one to eight for a one hour long group or one to ten for an hour and a half long group. The maximum group size shall not exceed sixteen.

b. Child victim or child witness groups shall have a ratio of one staff to eight children when the consumers are under twelve years of age, and a one staff to ten children ratio when the consumers are twelve years of age or older.

c. When any consumer enters a treatment program the staff shall conduct an in-depth, face to face interview and assessment to determine the consumer's clinical profile and treatment needs. For perpetrator consumers, additional information shall be obtained from the police incident report, perpetrator's criminal history, prior treatment providers, and the victim. When appropriate, additional information for child consumers shall be obtained from parents, prior treatment providers, schools and Child Protective Services. When any of the above information cannot be

obtained the reason shall be documented. The assessment shall include the following:

1) a profile of the frequency, severity and duration of the domestic violence behavior, which includes a summary of psychological violence,

2) documentation of any homicidal, suicidal ideation and intentions as well as abusive behavior toward children,

3) a clinical diagnosis and a referral for evaluation to determine the need for medication if indicated,

4) documentation of safety planning when the consumer is an adult victim, child victim, or child witness, and that they have contact with the perpetrator. For victims who choose not to become treatment consumers, safety planning shall be addressed when they are contacted, and

5) documentation that appropriate measures have been taken to protect children from harm.

4. Consumers deemed appropriate for a domestic violence treatment program shall have an individualized treatment plan, which addresses all relevant treatment issues. Consumers who are not deemed appropriate for domestic violence programs shall be referred to the appropriate resource, with the reasons for referral documented and notification given to the referring agency. Domestic violence counseling shall be provided when appropriate, concurrently with or after other necessary treatment.

5. Conjoint or group therapy sessions with victims and perpetrators together or with both co-perpetrators shall not be provided until a comprehensive assessment has been completed to determine that the violence has stopped and that conjoint treatment is appropriate. The perpetrator must complete a minimum of 12 domestic violence treatment sessions prior to implementing conjoint therapy.

6. A written procedure shall be implemented to facilitate the following in an efficient and timely manner:

a. entry of the court ordered defendant into treatment,
b. notification of consumer compliance, participation or completion,
c. disposition of non-compliant consumers,
d. notification of the recurrence of violence, and
e. notification of factors which may exacerbate an individual's potential for violence.

7. Comply with the "Duty to Warn," Section 78B-3-502.

8. Document specialized training in domestic violence assessment and treatment practices including 24 hours of pre-service training within the last two years and 16 hours of training annually thereafter for all individuals providing treatment services.

9. Clinical supervision for treatment staff who are not clinically licensed shall consist of a minimum of an hour a week to discuss clinical dynamics of cases.

E. Opioid outpatient treatment programs shall:

1. Admit consumers to the program and dispense medications only after the completion of a face to face visit with a licensed practitioner having authority to prescribe controlled substances who confirms the opioid dependence. A licensed practitioner having authority to prescribe controlled substances must conduct a face to face visit for every subsequent dose increase.

2. Assure all consumers see the physician at least once yearly.

3. Require all consumers admitted to the program to participate in random, observed drug testing. Drug testing will be

performed by the program minimally, 2 times per month for the first 3 months of treatment, and monthly thereafter, except for a consumer whose lack of progress shall require more frequent drug testing for a longer period of time.

4. Require consumers to participate in counseling sessions at least 1 hour per week for the first 90 days. Upon successful completion of this phase of treatment, consumers shall be required to participate in counseling 2 hours per month for the next 6 months. Upon successful completion of 9 months of treatment, consumers shall be seen at least monthly thereafter until discharge. Exceptions to this requirement must be approved in writing by the Division of Substance Abuse and Mental Health.

5. Maintain a staff to consumer ratio of:

a. 1 counselor to every 50 consumers.

b. 1 hour of physician time at the program site each month for every 10 consumers enrolled.

c. 1 FTE nurse to dispense medications for every 150 consumers dosing on an average daily basis.

6. Comply with R523-21-1 Rules Governing Methadone Providers.

KEY: human services, licensing, outpatient treatment programs

Date of Enactment or Last Substantive Amendment: [~~May 2, 2000~~]2010

Notice of Continuation: April 5, 2010

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

Human Services, Child and Family Services **R512-301** Out of Home Services, Responsibilities Pertaining to a Parent or Guardian

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34160

FILED: 10/20/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add rulemaking authority, update citation information, and make minor formatting and grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the rulemaking authority for Child and Family Services, update the referenced citations, and make minor formatting and grammatical changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-106

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Title 45, Chapter XIII, Part 1356, published by Government Printing Office, 10/01/2008
- ◆ Adds Pub. L. No. 110-351, published by Government Printing Office, 10/07/2008
- ◆ Adds Title 42, Chapter 7, Subchapter IV, Section 672, published by Government Printing Office, 01/03/2007
- ◆ Adds Title 45, Chapter XIII, Part 1355, published by Government Printing Office, 10/01/2008

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes update citation information and add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.

◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government, but only applies to Child and Family Services.

◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses, but only applies to Child and Family Services.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities, but only applies to Child and Family Services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-301. Out[-]of[-]Home Services, Responsibilities Pertaining to a Parent or Guardian.

R512-301-1. Purpose and Authority.

[A-](1) The purposes of this rule are to clarify:

[+](a) Roles and responsibilities of Child and Family Services[the Division] to a parent or guardian of a child receiving out[-]of[-]home services in accordance with Rule R512-300, and

[2-](b) Roles and responsibilities of a parent or guardian while a child is receiving out[-]of[-]home services.

[B-](2) Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services[the Division] to provide out-of-home services and 42 USC [Section 4]672 authorizes federal foster care. 42 USC [Section 4]672 as amended by Public Law 110-351 (October 7, 2008)[(2000)], and 45 CFR Parts 1355 and 1356 (October 1, 2008)[(0)] are incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-301-2. Definitions.

The following terms are defined for the purposes of this rule:

[A-](1) Child and Family Services[Division] means the Division of Child and Family Services.

[B-](2) Out[-]of[-]Home Services means those services defined in Rule R512-300.

(3) Child and Family Team means a group that includes the child and family and meets together as often as needed to support the family and assist them in meeting their needs to achieve goals that will lead to conclusion of Child and Family Services involvement. This may include the referent or other concerned individuals identified by the family as support persons.

[C-](4) Reunification means safely returning the child to the parent or guardian from whom the child was removed by court order or through a voluntary placement.

R512-301-3. Child and Family Services[Division] Roles and Responsibilities to a Parent or Guardian of a Child Receiving Out[-]of[-]Home Services when Reunification is the Primary Permanency Goal.

[A-](1) Child and Family Services[The Division] is responsible to make reasonable efforts to reunify a child with a parent or guardian when a court has determined that reunification is appropriate in accordance with Section 62A-4a-203 or when a child has been placed with Child and Family Services[the Division] through a voluntary placement.

[B-](2) Child and Family Services[The Division] shall actively seek the involvement of the parent or guardian in the Child and Family Team process, including participation in establishing the Child and Family Team, completing an assessment, developing the Child and Family Plan, and selecting the child's primary and

concurrent permanency goals as described in Rule[Section] R512-300[-4].

[E-](3) The Child and Family Plan shall not only address the child's strengths and needs, but shall also address the family's strengths and underlying needs. In accordance with Section 62A-4a-205, the plan shall identify specifically what the parents must do in order for the child to be returned home, including how those requirements may be accomplished behaviorally and how they shall be measured. Provisions of the plan shall be crafted by the Child and Family Team and designed to maintain and enhance parental functioning, care, and familial connections.

[D-](4) In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's parent in the plan development.

[E-](5) The parent or guardian and the parent or guardian's legal counsel shall be provided a copy of the completed Child and Family Plan.

[F-](6) The caseworker shall have regular contact with the parent or guardian to facilitate progress towards goal achievement as determined by the needs of the parent and the recommendations of the Child and Family Team. At a minimum, the caseworker shall visit the parent or guardian at least once per month.

[G-](7) Child and Family Services[The Division] shall make efforts to engage a parent or guardian in continuing contacts with the child, whether through visitation, phone, or written correspondence. Visitation requirements specified in Rule[Section] R512-300[-4] apply.

[H-](8) Child and Family Services[The Division] shall also make efforts to engage a parent or guardian in appropriate parenting tasks such as attending school meetings and health care visits.

[I-](9) The parent or guardian has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with 42 USC [Section 4]675[(6)] and Section 78A-6-317.

R512-301-4. Roles and Responsibilities of a Parent or Guardian of a Child Receiving Out[-]of[-]Home Services when Reunification is the Primary Permanency Goal.

In addition to responsibility to comply with orders made by the court, a parent or guardian has responsibility to:

[A-](1) Participate in the Child and Family Team process.

[B-](2) Provide input into the assessment and Child and Family Plan development process to help identify changes in behavior and actions necessary to enable the child to safely return home.

[C-](3) Complete goals and objectives of the plan.

[D-](4) Communicate with the caseworker about progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames.

[E-](5) Maintain communication and frequent visitation with the child in accordance with Rule[Section] R512-300[-4], when not prohibited by the court.

[F-](6) Provide information necessary to determine the child's eligibility for Federal benefits while in care in accordance with Rule[Section] R512-300[-4], including information on household income, assets, and household composition.

[G-](7) Provide financial support for the child's care in accordance with 42 USC [Subsection 4]671[(a)(19)] and Sections

62A-4a-114 and 78A-6-1106, unless deferred or waived as specified in Rule R495-879.

R512-301-5. Guidelines for Making Recommendations for Reunification to the Court.

[A-](1) In accordance with Section 62A-4a-205, when considering reunification, the child's health, safety, and welfare shall be the paramount concern.

[B-](2) The Child and Family Team shall consider the following factors in determining whether to recommend that the court order reunification:

[1-](a) The risk factors that led to the placement were acute rather than chronic.

[2-](b) The child and family assessments (including factors such as threats of harm, protective capacities of the parent or guardian, the child's vulnerabilities, [the initial risk assessment,] the level of informal and formal supports available to the family, and the family history, including past patterns of behavior) conclude that the parent appears to possess or have the potential to develop the ability to ensure the child's safety and provide a nurturing environment.

[3-](c) The parent is committed to the child and indicates a desire to have the child returned home.

[4-](d) The child has a desire for reunification as determined using age appropriate assessments.

[5-](e) Members of the Child and Family Team support a reunification plan.

[6-](f) If the parent is no longer living with the individual who severely abused the minor, reunification may be considered if the parent is able to implement a plan that ensures the child's ongoing[on-going] safety.

[7-](g) Existence of factors or exceptions that preclude reunification as specified in Section 78A-6-312.

[E-](3) Child and Family Services[The Division] shall provide additional relevant facts, when available, to assist the court in making a determination regarding the appropriateness of reunification services such as:

[1-](a) [t]The parent's failure to respond to previous services or service plan.[;]

[2-](b) [t]The child being abused while the parent was under the influence of drugs or alcohol.[;]

[3-](c) [e]Continuation of a chaotic, dysfunctional lifestyle.[;]

[4-](d) [t]The parent's past history of violent behavior.[;]

[5-](e) [t]The testimony of a properly qualified professional or expert witness that the parent's behavior is unlikely to be successfully changed.

R512-301-6. Return Home and Trial Home Placement.

[A-](1) When a child and family's safety needs have been met and the original reasons and risks have been reduced or eliminated, the child may return home, when allowable by court order or in conjunction with provisions of a voluntary placement.

[B-](2) The Child and Family Team shall plan for the transition and return home prior to the child being returned.

[E-](3) Child and Family Services[The Division] shall provide reasonable notice (unless otherwise ordered by the court) of the date the child will be returning home to all pertinent parties such as the child, parents, [g]Guardian ad [f]Litem, [foster]out-of-home

care provider, school staff, therapist, and partner agencies, so all parties can be adequately prepared for the return home.

[D-](4) Prior to and when the child is returned home, Child and Family Services[the Division] shall provide services directed at assisting the child and family with the transition back into the home and shall contact relevant parties to ensure that no further abuse or neglect is occurring.

[E-](5) If it is determined that the child and family require more intensive services to ensure successful reunification, intensive family reunification services may be utilized in accordance with Rule R512-100.

[F-](6) A child may be returned home for a trial home visit for up to 60 days. The trial home visit shall continue until the court has terminated agency custody[returned custody to the parent or guardian].

R512-301-7. Voluntary Relinquishment of Parental Rights.

[A-](1) When it is not in a child's best interest to be reunified with the child's parents, Child and Family Services[the Division] may explore with both parents the option of voluntary relinquishment in accordance with Section 78A-6-514.

[B-](2) If the child is [Indian]Native American, provisions of the Indian Child Welfare Act (ICWA), 25 USC 1913[Section 1915, incorporated by reference,] shall be met.

R512-301-8. Termination of Parental Rights.

[A-](1) If a court determines that reunification services are not appropriate, Child and Family Services[the Division] shall petition for termination of parental rights in accordance with 42 USC [Section 4]675[-(5)(E)], 42 CFR 1356.21[(+)], and Section 62A-4a-203.5 unless exceptions specified in 42 CFR 1356.21[(+) (2)] or [Subs]Section 62A-4a-203.5[(+)] apply.

[B-](2) Child and Family Services[The Division] shall document in the Child and Family Plan care by kin or [a-] compelling reasons for determining that filing for termination of parental rights is not in the child's best interests and shall make the plan available to the court for review.

[E-](3) When Child and Family Services[the Division] files a petition to terminate parental rights, the caseworker must also concurrently begin to identify, recruit, process, and seek approval of a qualified adoptive family for the child. These efforts must be documented in the [Child and Family Plan]case record as specified in Rule[Section] R512-300[-4].

[D-](4) If the child is [Indian]Native American, provisions of the ICWA, 25 USC 1913, [Indian Welfare Act, 25 USC Section 1915, incorporated by reference,] shall be met.

[E-](5) Child and Family Services[The Division] shall not give approval to finalize an adoption until the period to appeal a termination of parental rights has expired.

KEY: social services, child welfare, domestic violence, child abuse

Date of Enactment or Last Substantive Amendment: [September 3, 2003]2010

Notice of Continuation: August 20, 2008

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-106

Human Services, Child and Family
Services
R512-305
Out of Home Services, Transition to
Adult Living Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34161

FILED: 10/20/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add rulemaking authority, update citation information, and make minor formatting and grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the rulemaking authority for Child and Family Services, update the referenced citations, and make minor formatting and grammatical changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Title 42, Chapter 7, Subchapter IV, Section 677, published by Government Printing Office, 01/03/2007

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes update citation information and add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
- ◆ LOCAL GOVERNMENTS: There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government, but only applies to Child and Family Services.
- ◆ SMALL BUSINESSES: There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses, but only applies to Child and Family Services.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities, but only applies to Child and Family Services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-305. Out[-]of[-]Home Services, Transition to Adult Living Services.

R512-305-1. Purpose and Authority.

[A-](1) The purpose of Transition to Adult Living (TAL) services is to help prepare a youth who is receiving out[-]of[-]home services in accordance with Rule R512-300 to gain skills to transition to [self-sufficiency in-]adulthood and to provide support to youth upon leaving [agency]the Division of Child and Family Services (Child and Family Services) custody. TAL is a continuum of services that begins while youth are in care and continues through post-discharge with the Young Adult Resource Network (YARN).

[B-](2) TAL services, which includes the Education and Training Voucher Program, are authorized by the John H. Chafee Foster Care Independence Program, 42 USC 677 (January 3, 2007) [(1999)], incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-305-2. Scope of Services.

[A-](1) Qualification for and duration of services:

[1-](a) TAL services are required for all youth receiving out[-]of[-]home services, age 14 years or older, until [agency]Child and Family Services custody is terminated regardless of permanency goal, as specified in Rule R512-300[-4-D].

[2-](b) The YARN provides services for youth if they are no longer in [care]Child and Family Services custody and are not yet 21 years of age, and the youth:

[a-](i) Ages out of [foster]out-of-home care, or
 [b-](ii) While in [foster]out-of-home care, after the age of 14 years, [the youth-]received at least 12 consecutive months of TAL services and the court terminated reunification.

[B-](2) Service description:

[+](a) TAL services build on the youth's individual strengths and develop personal assets in order to help young people acquire the motivation and the means to be successful throughout their lives. The strategies are aimed at helping [foster-]youth achieve five fundamental aspects of adult life, including safe and affordable housing, educational attainment and stable employment, health care access, positive sense of self, and supportive and enduring relationships.

[2-](b) YARN consists of time-limited support to youth. This assistance can be provided through support, financial aid, or Basic Life Skills training[Classes]. It [and-]may include housing, counseling, employment education, and other appropriate support and services to complement a youth's efforts to achieve self-sufficiency.

[C-](3) Availability:

[+](a) TAL services and YARN are available in all geographic regions of the state.

[2-](b) TAL services and YARN are available on the same basis to [Indian]Native American youth who are or were formerly in Tribal custody within the boundaries of the state.

R512-305-3. Transition to Adult Living Services for a Youth in Child and Family Services[Agency] Custody.

[A-](1) The caseworker, with the assistance of the youth and Child and Family Team, ensures completion of the empirically validated life skills assessment to identify the strengths and needs of the youth.

[B-](2) Based upon the empirically validated life skills assessment, a TAL plan is developed that identifies the youth's strengths, needs, and specific services.

[C-](3) The Child and Family Team determines the TAL plan. Youth aged 14 years or older are required to have a TAL plan, with youth aged 16 years or older taking the lead in setting goals and facilitating the Child and Family Team with staff guidance.

[D-](4) The TAL plan includes a continuum of training and services to be completed by the youth[-] and designated team members[-] in such settings as at the foster home, with a therapist, at school, or through other community-based resources and programs.

[E-](5) Basic Life[Living] Skills training shall be offered to each youth who attains age 16 years. The training may include training in daily living skills, budgeting, career development and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention).

[F-](6) Each youth who completes Basic Life[Living] Skills training may receive a completion payment.

R512-305-4. Transition to Adult Living Placement for a Youth in Child and Family Services[Agency] Custody.

(1) A TAL placement may be used as an alternative to out[-]of[-]home care when it is determined that such a placement is in the best interest of the youth. The appropriate types of living

arrangements for youth in this situation include living with kin; living with former out[-]of[-]home caregivers while paying rent; living in the community with roommates of the same sex; living alone; living in a group facility, YWCA, boarding house, or dorm; or living with an adult who has passed a background check or the placement was assessed and approved by the region[st] director or designee. This recommendation will be presented to the Child and Family Team, who will work to ensure that this type of placement is appropriate and that the following [p]Practice [g]Guidelines are met:

[A-](a) A TAL placement may be used as an out-of-home care placement.

[B-](b) A youth must be at least 16 years of age to be in a TAL placement.

[C-](c) The Child and Family Team is responsible to determine if a recommendation for a TAL placement for a youth is appropriate.

[D-](d) The region[st] director or designee is authorized to approve a TAL placement.

[E-](e) The caseworker and youth shall complete a contract outlining responsibilities and expectations while in the TAL placement.

[F-](f) The caseworker shall visit with and monitor progress of the youth at an interval determined by the Child and Family Team, but no less frequently than once per month.

[G-](g) The youth may receive a TAL stipend while in the TAL placement.

[H-](h) If the TAL placement is not successful, the Child and Family Team shall meet to determine, with the youth, a more appropriate living arrangement in accordance with R512-305-4.[E-]

R512-305-5. Child and Family Services[Division] Responsibility to a Youth Leaving Out[-]of[-]Home [Services]Care.

[A-](1) The YARN provides support to youth who leave out[-]of[-]home care, as specified in R512-305-2.

[B-](2) A youth may access services by contacting a Child and Family Services[Division] office and being referred to a regional TAL coordinator.

[C-](3) Services may include additional [b]Basic [f]Life [s]Skills training, information and referral, mentoring, computer access for resources, and follow-up support. Funds may also assist eligible youth in the four areas listed below:

[+](a) Education, Training, and Career Exploration.

[2-](b) Physical, Mental Health, and Emotional Support.

[3-](c) Transportation.

[4-](d) Housing Support.

[D-](4) Funds used for room and board are subject to federal limits.

KEY: social services, child welfare, [foster]out-of-home care, Transition to Adult Living

Date of Enactment or Last Substantive Amendment: [June 19, 2006]2010

Notice of Continuation: August 20, 2008

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105

Human Services, Child and Family
Services
R512-306
Transition to Adult Living Services,
Education and Training Voucher

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34162

FILED: 10/20/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add rulemaking authority, update citation information, and make minor formatting and grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the rulemaking authority for Child and Family Services, update the referenced citations, and make minor formatting and grammatical changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 63G-4-301

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Title 20, Chapter 28, Subchapter IV, Part E, Section 1087ll, published by Government Printing Office, 01/03/2007
- ◆ Adds Pub. L. No. 107-133, published by Government Printing Office, 01/17/2002
- ◆ Adds Title 20, Chapter 28, Subchapter IV, Part E, Section 1087kk, published by Government Printing Office, 01/03/2007

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes update citation information and add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
- ◆ LOCAL GOVERNMENTS: There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government, but only applies to Child and Family Services.
- ◆ SMALL BUSINESSES: There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses, but only applies to Child and Family Services.
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than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities, but only applies to Child and Family Services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

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- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Brent Platt, Director

**R512. Human Services, Child and Family Services.
R512-306. Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program.**

R512-306-1. Purpose and Authority.

(1) The Education and Training Voucher Program assists individuals in [~~foster~~out-of-home care to make a more successful transition to [~~self-sufficiency in~~]adulthood. The Education and Training Voucher program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

(2) The Education and Training Voucher Program is authorized by [~~Pub. L.~~Public Law No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (January 3, 2007)](~~2001~~) are also incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-306-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) Institution of higher education means a school that:

[+](i) Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or

~~[(ii)]~~(ii) Provides not less than one year of training towards gainful employment, or

~~[(iii)]~~(iii) Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

~~[(A)]~~(A) Admits as regular students only persons with a high school diploma or equivalent; or who are beyond the age of compulsory school attendance (Sections 53A-11-101 and 53A-11-102).

~~[(B)]~~(B) Public or non-profit facility; and

~~[(C)]~~(C) Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

(b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

(c) GED means General Education Development.

(d) Child and Family Services~~[Division]~~ means the Division of Child and Family Services.

~~[(e)]~~(e) Full-time means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

~~[(f)]~~(f) Foster~~[Out-of-home]~~ care means substitute care for children in the custody of the Department of Human Services/Division of Child and Family Services and/or ~~[Indian]~~Native American Tribes.

(g) Part-time means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

R512-306-3. Scope of Program.

(1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

(a) An individual in foster~~[out-of-home]~~ care who has not yet reached 21 years of age, or

(b) An individual no longer in foster~~[out-of-home]~~ care, but who received 12 months of Transition to Adult Living services after the age of 14 years while in foster~~[out-of-home]~~ care and the court terminated reunification, or

(c) An individual no longer in foster~~[out-of-home]~~ care who reached 18 years of age while in foster~~[out-of-home]~~ care and who has not yet reached 21 years of age, or

(d) An individual adopted from foster~~[out-of-home]~~ care after reaching 16 years of age and who has not yet attained 21 years of age, and

(e) Has an individual educational assessment and individual education plan completed by Child and Family Services~~[the Division]~~ or their designee;

(f) Submits a completed application for the Education and Training Voucher Program;

(g) Is~~[Be]~~ accepted to a qualified college, university, or vocational program;

(h) Applies~~[Apply]~~ for and accepts available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

(i) Enrolls as a full-time or part-time student in the college, university, or vocational program; and

(j) Maintains a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

(2) The application and attachments will be reviewed and approved by regional Transition to Adult Living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when Education and Training Voucher Program funding is available. If demand exceeds available funding, Child and Family Services~~[the Division]~~ may establish a waiting list, which will then be awarded to the applicants in the order received on a first~~[-]~~-come first~~[-]~~-serve basis for funding or Child and Family Services~~[the Division]~~ may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided.

(3) If an application for benefits under the Education and Training Voucher ~~[p]~~Program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section 63G-4-301~~[as per 63G-4-301 et seq.]~~.

(4) The individual may participate in the Education and Training Voucher Program until~~[the completion of]~~:

(a) ~~[(t)]~~The completion of the degree or vocational program; or

(b) ~~[(r)]~~The individual reaches age 21 years.

(c) If an individual attains age 21 years while enrolled in the Education and Training Voucher Program, the individual may continue in the program until age 23 years as long as the individual is attending an accredited or pre-accredited college, university, or vocational program full-time or part-time, is making satisfactory progress, and funding continues to be available. The individual must make a written request and receive a written approval prior to his or her 21st birthday to be continued for eligibility for the Education and Training Voucher Program.

(5) The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to Child and Family Services~~[the Division]~~ in order to continue receiving benefits under the program.

(6) A program participant who receives less than a 2.0 GPA in a single grading period will be placed on probationary status and,

(a) The individual will receive written notice of the probationary status. The individual will have one subsequent grading period to regain or show significant progress toward a 2.0 GPA to continue in the program.

(b) Upon completion of a satisfactory grading period, the participant will be notified that the probation period is over.

(c) The participant that does not receive satisfactory grades while on probation will receive written notice of loss of eligibility for the Education and Training Voucher Program.

(7) An individual under age 21 years who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress may reapply for the program at any time.

(8) An individual may receive vouchers up to a maximum amount of \$5,000 per year through the Education and Training Voucher Program. Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

(a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus:

- (i) [e]Expected contributions from the individual's family; and
 - (ii) [e]Estimated financial assistance from other State or Federal grants or programs.
- (b) Awards are subject to the availability of Child and Family Services[~~Division~~] Education and Training Voucher Program funds appropriated for this program.
- (c) In accordance with 42 USC 677[~~(+)(5)~~], the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining an individual's eligibility for, or amount of, any other Federal or Federally supported assistance.

KEY: [foster]out-of-home care, Transition to Adult Living
Date of Enactment or Last Substantive Amendment: [~~June 19, 2006~~]2010
Notice of Continuation: May 7, 2009
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 63G-4-301

Human Services, Child and Family
 Services
R512-308
 Out of Home Services, Guardianship
 Services and Placements

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 34163
 FILED: 10/20/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add rulemaking authority, update citation information, and make minor formatting and grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the rulemaking authority for Child and Family Services, update the referenced citations, and make minor formatting and grammatical changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 78A-6-105

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes update citation information and add rulemaking authority for

Child and Family Services, but do not increase workload that would require additional staff or other costs.

♦ LOCAL GOVERNMENTS: There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government, but only applies to Child and Family Services.

♦ SMALL BUSINESSES: There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses, but only applies to Child and Family Services.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities, but only applies to Child and Family Services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule because the rule only applies to Child and Family Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES
 CHILD AND FAMILY SERVICES
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
 ♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.
R512-308. Out-of-Home Services, Guardianship Services and Placements.

R512-308-1. Purpose and Authority.
 [A-](1) The purpose of this rule is to define guardianship services and placements. Guardianship services and placements provide a permanent, safe living arrangement for a child in the court-ordered custody of Child and Family Services[~~the Division~~]

or Department of Human Services when it is not appropriate for the child to return home or be adopted, and continuing agency custody is not in the child's best interest.

[B-](2) Guardianship services are authorized by Section[s] 62A-4a-105[~~(6)~~ and 78A-6-105].

(3) This rule is authorized by Section 62A-4a-102.

R512-308-2. Definitions.

(1) "Child and Family Services" means the Division of Child and Family Services.

[A-](2) "Child and Family Team" has the same meaning as defined in Rule R512-301. [~~means a group that meets together as often as needed and works to support the family and assist them in meeting their needs. This may include the referent or other concerned individuals identified by the family as support persons.~~]

[B-](3) "Guardianship" has the same meaning as defined in Section 78A-6-105.

C. "Division" means the Division of Child and Family Services.]

R512-308-3. General Guardianship Qualifying Factors.

[A-](1) General qualifying factors apply for both relative and non-relative guardianship, and all factors must be met.

[+](a) The child cannot safely return home. This requirement is met if the court determines that reunification with the child's parents is not possible or appropriate and the Child and Family Team and regional screening committee agree that adoption is not an appropriate plan for the child.

[2-](b) The parent and child have a significant bond but the parent is unable to provide ongoing care for the child, such as an emotional, mental, or physical disability, and the child's current caregiver has committed to raising the child to the age of majority and to facilitate visitation with the parent.

[3-](c) The prospective guardian must:

[a-](i) Be able to maintain a stable relationship with the child;

[b-](ii) Have a strong commitment to providing a safe and stable home for the child on a long-term basis;

[e-](iii) Have a means of financial support and connections to community resources; and

[d-](iv) Be able to care for the child without Child and Family Services[~~Division~~] supervision.

[4-](d) The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager.

[5-](e) There are compelling reasons why the child cannot be adopted, such as when the child's tribe has exclusive jurisdiction or the tribe has chosen to intervene in the adoption proceedings. Under the Indian Child Welfare Act (ICWA)[~~of 1978~~], 25 USC Section 1911[Public Law No. 95-608, 92 Stat. 3069 codified at 25 U.S.C. 1901-63], a tribe has the right to determine the child's permanency. For this reason, the tribe has the authority to approve guardianship with the current caregiver.

R512-308-4. Non-Relative Qualifying Factors.

[A-](1) In addition to general qualifying factors in R512-308-3, all of the following factors apply to non-relative guardianship and must be met.

[+](a) The child is in the [~~Division's~~] legal custody of Child and Family Services and has been in custody for at least 12 consecutive months. If this is a sibling group, at least one child must have been in custody for 12 consecutive months.

[2-](b) The prospective guardian is a licensed [~~foster-parent~~]out-of-home care provider.

[3-](c) The child has lived for at least six months in the home of the prospective guardian. The region[~~a~~] director or designee may waive the six-month placement requirement for sibling groups if at least one sibling has been in the home for six months and meets all other eligibility criteria.

[4-](d) A Child and Family Team has formally assessed the placement and found that continuation with the caregiver is in the child's best interest and supports the safety, permanency, and well-being of the child.

[5-](e) Child and Family Services[~~The Division~~] has no concerns with the care the child has received in the home.

[6-](f) The child has a stable and positive relationship with the prospective guardian.

[7-](g) The child has reached the age of 12 years. The region[~~a~~] director or designee may waive the age requirement for members of a sibling group placed with a non-relative if at least one sibling is 12 years of age or older and meets all other guardianship criteria and adoption is not the best permanency option for the younger children.

R512-308-5. Relative Qualifying Factors.

[A-](1) In addition to general qualifying factors found in R512-308-3, all of the following factors apply for relative guardianship and must be met.

[+](a) The child's prospective guardian is a relative to the child who meets the relationship requirements of the Department of Workforce Services Specified Relative Program, which currently includes:

[a-](i) Grandfather or grandmother;

[b-](ii) Brother or sister;

[e-](iii) Uncle or aunt;

[d-](iv) First cousin;

[e-](v) First cousin once removed (a first cousin's child);

[f-](vi) Nephew or niece;

[g-](vii) Persons of preceding generations as designated by prefixes of grand, great, great great, or great great great;

[h-](viii) Spouses of any relative mentioned above even if the marriage has been terminated;

[+](ix) Persons that meet any of the above-mentioned relationships by means of a step relationship; or

[j-](x) Relatives that meet one of these relationships by legal adoption.

[2-](b) If not licensed as an [~~foster-parent~~]out-of-home care provider, the relative has completed kinship screening, including a home study and background checks, in accordance with [~~K~~]Kinship [~~P~~]Practice [~~G~~]Guidelines.

[3-](c) The child's needs may be met without continued Child and Family Services[~~Division~~] funding. In order to be considered for a guardianship subsidy, the prospective relative guardian must be a licensed [~~foster-parent~~]out-of-home care provider and demonstrate that they cannot qualify for a Specified Relative Grant through the Department of Workforce Services as outlined in R512-308-6.

R512-308-6. Guardianship Subsidy Availability, Scope, Duration.

[A-](1) Guardianship subsidies are available to meet the care and maintenance needs for children in [foster]out-of-home care:

[1-](a) For whom guardianship has been determined as the most appropriate primary goal.

[2-](b) Who do not otherwise have adequate resources available for their care and maintenance.

[3-](c) Who meet the qualifying factors described in R512-308-4 Non-Relative Qualifying Factors and who cannot qualify to receive a Specified Relative Grant from the Department of Workforce Services.

[a-](i) The caseworker must be provided with a copy of a denial letter from the Department of Workforce Services or written proof that the relationship requirements do not apply, such as through relevant birth certificates.

[b-](ii) Approval from the regional guardianship screening committee and regional administration is required in making this determination.

[B-](2) If a prospective guardian is found to be receiving both a Specified Relative Grant and guardianship subsidy for the same child, the caseworker will notify the Department of Workforce Services and appropriate actions may be taken for repayment.

[C-](3) Guardianship subsidies are available through the month in which the child reaches age 18 years.

[D-](4) Each region may establish a limit to the number of eligible children who may receive guardianship subsidies.

[E-](5) Guardianship subsidies are subject to the availability of state funds designated for this purpose.

R512-308-7. Regional Guardianship Subsidy Screening Committee.

[A-](1) Each region shall establish at least one regional guardianship subsidy screening committee. This committee may be combined with another appropriate committee, such as the adoption subsidy committee or placement committee.

[B-](2) The regional guardianship subsidy screening committee shall be comprised of at least five members. A minimum of three members must be present for making decisions regarding a guardianship subsidy. Decisions shall be made by consensus.

[C-](3) The regional guardianship subsidy screening committee is responsible to:

[1-](a) Verify that a child qualifies for a guardianship subsidy.

[2-](b) Approve the level of need and amount of monthly subsidy for initial requests, changes, and renewals.

[3-](c) Document the committee's decisions.

[4-](d) Coordinate supportive services to prevent disruptions and preserve permanency.

R512-308-8. Determining Guardianship Subsidy Amounts.

[A-](1) The regional guardianship subsidy screening committee will determine the subsidy amount by considering the special needs of the child and the circumstances of the guardian family. The caseworker presents to the committee information regarding the special needs of the child, the guardian family's income and expenses, and/or the guardian family's special circumstances.

[B-](2) All of the following factors must be considered when determining the amount of the monthly subsidy to be granted:

[1-](a) All sources of financial support for the child including Supplemental Security Income, Social Security benefits, and other benefits. The regional guardianship subsidy committee may require verification of financial support.

[a-](i) If a child is receiving benefit income and the income can continue after guardianship is granted, this amount will be deducted from the guardianship subsidy amount.

[b-](ii) The guardianship subsidy should not replace other available income, such as Supplemental Security Income.

[C-](3) A guardianship subsidy will not exceed the levels indicated in Level I and Level II below, and may be less based upon the ongoing needs of the child and the needs of the guardian family.

[1-](a) Guardianship Level I (Basic): Guardianship Level I is for a child who may have mild to moderate medical needs, psychological, emotional, or behavioral problems, and who requires parental supervision and care. The amount of guardianship subsidy for a child whose needs are within Level I may be any amount up to the lowest basic [foster]out-of-home care rate.

[2-](b) Guardianship Level II (Specialized): Guardianship Level II is for a child who may be physically disabled, developmentally delayed, medically needy or medically fragile, or have a serious emotional disorder. The amount of the guardianship subsidy may range from the lowest basic [foster]out-of-home care rate to the lowest specialized [foster]out-of-home care rate.

[D-](4) Children who are receiving the structured [foster]out-of-home care rate in [foster]out-of-home care or who are in a group or residential setting are considered for the Guardianship Level II rate.

[E-](5) Guardianship subsidies may not exceed the Guardianship Level II rate.

[F-](6) Guardianship subsidies are funded with state general funds within regional [foster]out-of-home care budgets. A region has the discretion to limit the number of guardianship subsidies or reduce guardianship subsidy rates based on the availability of funds.

[G-](7) Changing the amount of the guardianship subsidy.

[1-](a) The amount of a guardianship subsidy does not automatically increase when there is an [foster]out-of-home care rate change or as the child ages.

[2-](b) A guardian may request a guardianship subsidy review when seeking an increase in the guardianship subsidy amount, not to exceed the maximum amount allowable for the child's level of need. The guardian must complete the Request for Subsidy Increase Form to provide documentation to justify the request.

[3-](c) The request must be reviewed and approved by the regional guardianship subsidy screening committee. If approved, a new Guardian Subsidy Agreement will be completed.

[4-](d) Child and Family Services~~[The Division]~~ must provide written notice of agency action by certified mail at least 30 days in advance if a guardianship subsidy rate is going to be reduced.

R512-308-9. Guardianship Subsidy Agreement.

[A-](1) A Guardianship Subsidy Agreement specifies the terms for financial support for the child's basic needs.

[B-](2) A guardianship subsidy worker will complete the Guardianship Subsidy Agreement.

[C-](3) The effective date of the initial agreement is the date of the court order granting guardianship.

[D-](4) A Guardianship Subsidy Agreement must:

[1-](a) Be signed by the guardian and Child and Family Services[~~the Division~~] prior to any payments being made.

[2-](b) Identify the reason a subsidy is needed.

[3-](c) List the amount of the monthly payment.

[4-](d) Identify dates the agreement is in effect.

[5-](e) Identify responsibilities of the guardian.

[6-](f) Identify under what circumstances the agreement may be amended or terminated and the time period for agreement reviews.

[7-](g) Include a provision for a reduction or termination in the amount of the guardianship subsidy in the event a legislative or executive branch action affects Child and Family Services[~~the Division's~~] budget or expenditure authority, making it necessary for Child and Family Services[~~the Division~~] to reduce or terminate guardianship subsidies or if a regional office determines that reduction is necessary due to regional budget constraints.

[8-](h) Include a provision for assignment of benefits to the Office of Recovery Services in accordance with the Office of Recovery Services requirements.

[9-](i) Include a provision for re-payment of any financial entitlement made by the Department of Human Services or Child and Family Services[~~Division~~] to the guardian that was incorrectly paid.

R512-308-10. Notification Regarding Changes.

[A-](1) The guardian must notify Child and Family Services[~~the Division~~] if:

[1-](a) There is no longer a need for a guardianship subsidy.

[2-](b) The guardian is no longer legally responsible for the support of the child.

[3-](c) The guardian is no longer providing any financial support to the child or is providing reduced financial support for the child.

[4-](d) The child no longer resides with the guardian.

[5-](e) The guardian has a change in address.

[6-](f) The child has run away.

[7-](g) The guardian is planning to move out-of-state.

R512-308-11. Reviews, Renewals, and Recertifications.

[A-](1) Reviews:

[1-](a) A guardianship subsidy worker will review each Guardianship Subsidy Agreement annually. The family situation, child's needs, and amount of the guardianship subsidy payment may be considered.

[2-](b) Prior to review, the guardian must complete the Guardianship Subsidy Recertification form provided by Child and Family Services[~~the Division~~] to verify that the guardian continues to support the child. If the Guardianship Subsidy Recertification form is not received after adequate notice, the guardianship subsidy may be delayed or face possible termination.

[B-](2) Renewals:

[1-](a) In order for guardianship assistance payments to continue, this agreement shall be renewed at intervals of up to three years until the child's 18th birthday.

[2-](b) The Department of Human Services or Child and Family Services[~~Division~~] shall provide written notification to the guardians before the next renewal date and shall supply the guardian with the appropriate forms.

[3-](c) The Department of Human Services[~~;~~] or Child and Family Services[~~the Division;~~] and the guardian may negotiate the terms of a new agreement at any time. In order to be effective, all new agreements shall be in writing, on a form approved by the Department of Human Services or Child and Family Services[~~the Division~~], and signed by the parties. Oral modifications or agreements shall bind the Department of Human Services[~~;~~] or Child and Family Services[~~the Division;~~] and the guardian.

[C-](3) Recertification:

[1-](a) In order for guardianship assistance payments to continue, the guardian must recertify annually by completing and submitting the Annual Guardianship Assistance Recertification form to the Department of Human Services or Child and Family Services[~~the Division~~].

R512-308-12. Appeals/Fair Hearings.

[A-](1) When a decision is made to deny, reduce, or terminate a guardianship subsidy, Child and Family Services[~~the Division~~] shall send by certified mail a written Notice of Agency Action. The notice shall also include information about how to request a fair hearing.

R512-308-13. Termination.

[A-](1) A Guardianship Subsidy Agreement will be terminated if any of the following circumstances occur:

[1-](a) The terms of the agreement are concluded.

[2-](b) The guardian requests termination.

[3-](c) The child reaches age 18 years.

[4-](d) The child dies.

[5-](e) The guardian parent dies or, in a two parent family, if both guardian parents die.

[6-](f) The guardian parents' legal responsibility for the child ceases.

[7-](g) The Department of Human Services or Child and Family Services[~~Division~~] determines that the child is no longer receiving financial support from the guardian parent.

[8-](h) The child marries.

[9-](i) The child enters the military.

[10-](j) The child is adopted.

[11-](k) The child is placed in [~~foster~~]out-of-home care.

[12-](l) The Department of Human Services or Child and Family Services[~~Division~~] determines that funding restrictions prevent continuation of subsidies for all guardians.

[B-](2) A guardianship subsidy payment may be terminated or suspended, as appropriate, if any of the following occur. The decision to terminate or suspend must be made by the regional guardianship subsidy screening committee.

[1-](a) The child is incarcerated for more than 30 days.

[2-](b) The child is out of the home for more than a 30-day period or is no longer living in the home.

[3-](c) The guardian fails to return the annual Guardianship Subsidy Recertification form or to complete the renewed Guardianship Subsidy Agreement within five working days of the renewal date.

[4-](d) There is a supported finding of child abuse or neglect against the guardian.

KEY: ~~foster~~ **out-of-home care, guardianship**
Date of Enactment or Last Substantive Amendment: ~~August 2, 2006~~ **2010**
Authorizing, and Implemented or Interpreted Law: ~~62A-4a-102; 62A-4a-105; 78A-6-105~~

Human Services, Child and Family Services
R512-500
Kinship Services. Placement and Background Screening

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34164

FILED: 10/20/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update citation information and make minor formatting and grammatical changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule update the referenced citations and make minor formatting and grammatical changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-209 and Section 78A-6-307 and Section 78A-6-307.5 and Section 78A-6-308

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes update citation information, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government, but only applies to Child and Family Services.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses, but only applies to Child and Family Services.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities, but only applies to Child and Family Services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule because it only applies to Child and Family Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 CHILD AND FAMILY SERVICES
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.
R512-500. Kinship Services,[-] Placement and Background Screening.

R512-500-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for kinship placement for a child who is in Child and Family Services custody, including Preliminary Placement, evaluation of kinship caregiver capacity for ongoing care, and background screening.

(2) This rule is authorized by Sections ~~62A-4a-102, 62A-4a-209, 78A-6-307, and 78A-6-307.5~~ and the ~~Indian Child Welfare Act (ICWA), 25 U.S.C. Sections 1901-63~~.

R512-500-2. Definitions.

- (1) "Abuse" is defined in Section 78A-6-105.
- (2) "Child" is defined in Section 62A-4a-101.
- (3) "Child and Family Services" means the Division of Child and Family Services, Department of Human Services.

(4) "Child and Family Team" has the same meaning as defined in Rule R512-301.

~~(4)~~(5) "Friend" means an individual, other than a non-custodial parent or relative as defined in Section 78A-6-307, who is licensed as a foster parent and is designated for preference for care of a child by a custodial parent or guardian of the child in accordance with Section 62A-4a-209.

~~(5)~~(6) "Kinship caregiver" means a non-custodial parent, relative, or friend, as defined in this section, who is selected for placement and care of a child in Child and Family Services custody.

~~(6)~~(7) "Neglect" is defined in Section 78A-6-105.

~~(7)~~(8) "Non-custodial parent" is a natural parent as defined in Section 78A-6-307 who is a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has had paternity established, who has not been granted legal custody of the child.

~~(8)~~(9) "Non-relative" is defined in Section 62A-4a-209.

~~(9)~~(10) "Preliminary Placement" means an out-of-home placement with a non-custodial parent or relative, or with a friend who is a licensed foster parent, which is referred to in statute as an emergency placement with a non-custodial parent or relative as authorized in Section 62A-4a-209 or a post-shelter hearing placement with a non-custodial parent or relative as authorized in Section 78A-6-307.5.

~~(10)~~(11) "Relative" is defined in Section 78A-6-307 as the child's "grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child." For a[n] ~~Indian~~Native American child, relative also includes "extended family members" as defined by the Indian Child Welfare Act (ICWA), 25 USC 1903~~[U.S.C. Section 1901-63]~~, which is "by the law or custom of the ~~Indian~~Native American child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the ~~Indian~~Native American child's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

~~(11)~~(12) "[s]Severe type of child abuse or neglect" is defined in Section 62A-4a-1002.

~~(12)~~(13) "[s]Substantiated" is defined in Section 62A-4a-101.

~~(13)~~(14) "[ss]Supported" is defined in Section 62A-4a-101.

R512-500-3. Philosophy.

(1) All children need permanency through enduring relationships that provide stability, familiarity, and support for the culture of the child; support the child's sense of self based on existing attachments; provide for the child's safety and physical care; and connect the child to their past, present, and future through continuing family relationships. First priority is to maintain a child safely at home. However, if a child cannot safely remain at home, kinship care has the potential for providing these elements of permanency by virtue of the kin's knowledge of and relationship to the family and child.

(2) All kinship work is done in the context of a Child and Family Team. Kinship care includes elements of child protection, in-home services, family preservation, and ~~foster~~out-of-home

care. When a child cannot safely remain home, kinship care is preferable to other out-of-home placements if the kinship caregiver can keep the child safe and appropriately meet the child's needs.

(3) The caregiver's willingness and ability to care for and keep the child safe are fundamental. The kinship caregiver must have or acquire knowledge of the child, be able to meet the child's needs, support reunification efforts, and be able to provide the child access to parents, siblings, and other family members through visits or caring for the child and siblings as a group.

(4) Ongoing assessment of the child's safety, permanence, and well-being is important to the stability and value of kinship care. Ongoing assessment of safety is based on the components of safety decision-making, which include threats of harm, vulnerabilities of the child, and protective capacities of the kinship caregiver and their support system.

(5) Providing for kinship care in the Child and Family Services spectrum of services requires active efforts to identify and locate kin families with whom children may form or continue relationships at home or in temporary or permanent placements. Support to kinship caregivers is essential to the success of the child's placement with the family and to the family's ability to respond to the needs of the child. As members of the Child and Family Team, kinship caregivers will seek support from other family members and from informal and formal supports to provide for the child.

R512-500-4. Preferences for Placement.

(1) The following order of preference applies to placement of a child in the custody of Child and Family Services, and is subject to the child's best interest:

(a) A non-custodial parent of the child in accordance with Section 78A-6-307;

(b) A relative of the child;

(c) A friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent; and

(d) A former ~~foster~~out-of-home care placement, shelter facility, or other ~~foster~~out-of-home care placement designated by Child and Family Services.

(2) Preferential consideration given to kinship caregivers in ~~Subs~~Section 78A-6-307~~(18)~~ expires 120 days from the date of the shelter hearing. Prospective kinship caregivers may be considered for placement after the 120 days has lapsed, if it is in the best interest of the child.

(3) A kinship caregiver who meets the definition of friend must be licensed as an out-of-home care provider in order for a child in the custody of Child and Family Services to be placed with them.

R512-500-5. Preliminary Placement.

(1) The requirements specified in Section 62A-4a-209 must be met for Preliminary Placement of a child with a kinship caregiver.

(2) A decision to make a Preliminary Placement of a child with a kinship caregiver will include background screening, assessment of the kinship caregiver's willingness and ability to care for a child and to keep the child safe, a limited home inspection, and background screening.

(3) A kinship caregiver must meet the background check requirements specified in R512-500-7~~(19)~~.

(4) Assessment of safety will be based on safety decision-making principles, which include:

- (a) Potential threats of harm;
- (b) Vulnerabilities of the child; and
- (c) Protective capacities of the potential kinship caregiver and their support system.

(5) The limited home inspection specified in Section 62A-4a-209 is required for a non-custodial parent or relative. The limited home inspection is conducted in the home of the prospective kinship caregiver to determine if there are apparent safety risks in the home that present a potential threat of harm to the child. The limited home inspection determines if the following are met:

- (a) The home is free from observable health and fire hazards.
- (b) There are adequate sleeping arrangements to meet the specific needs of each child.
- (c) Any firearms, ammunition, hazardous chemicals, and/or medications are secured and not accessible to children.

(6) References may be contacted to obtain input regarding placing the child with the potential kinship caregiver or information about other available relatives or friends who may care for the child.

R512-500-6. Evaluation of Capacity for Ongoing Care of a Child.

(1) The Child and Family Team will determine the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(a) Since the Preliminary Placement is made in an emergency situation they may or may not be the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(b) The ongoing caregiver may be the kinship caregiver who is the Preliminary Placement or may be a different prospective caregiver.

(+)(2) Child and Family Services will evaluate with the [family] prospective caregiver their capacity for ongoing care of the child as well as permanency if reunification efforts are not successful. The components of the evaluation process include:

(a) Results of the background screening specified in R512-500-7(2).

(b)(a) The child-specific home study, including:

(i) Results of the background screening specified in R512-500-7;

(ii) Obtaining positive written references from three different people known to the kinship caregiver expressing the referent's opinion about the family's ability to care for the child;

(+)(iii) Physical and emotional ability of the kinship caregiver to provide adequate care for the child;

(+)(iv) Understanding of family dynamics and how placement will impact relationships within the family;

(+)(v) Ability to provide for the child's safety and well-being needs and to support a plan for permanency;

(+)(vi) Analysis of the type of resources and support needed by the kinship caregiver to care for the child.

(+)(vii) Ability of the home to meet required safety standards of the Office of Licensing.

(e)(b) Providing information to the kinship caregiver to assist with considering options for ongoing care of the child, including:

(i) Educating the kinship caregiver of the expectations of caring for a child who is under the jurisdiction of the court.

(ii) Assessing the resources that may be available to assist the kinship caregiver in providing a stable placement for the child.

(iii) Becoming a licensed ~~[foster]~~out-of-home care placement for the child.

(iv) Requesting temporary custody and guardianship from the court.[]

~~_____ (2) A kinship caregiver who meets the definition of friend must be licensed as a foster parent in order for a child in the custody of Child and Family Services to be placed with them.~~

~~_____ (3) Obtain positive written references from two different people known to the kinship caregiver expressing the referent's opinion about the family's ability to care for the child.]~~

R512-500-7. Background Screening.

(1) Background Screening Procedure for Preliminary Placements.

(a) In order for a non-custodial parent or relative to be considered for Preliminary Placement of a child, background screening must be completed that meets the requirements of Sections 62A-4a-209, 78A-6-307, and 78A-6-308. If any non-relative adults live in the household, applicable background screening requirements in Sections 62A-4a-209, 78A-6-307, and 78A-6-308 must be met.

(b) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information in order for background screening to be conducted:

(i) Full first, middle, last, maiden, alias, and all previous married names.

(ii) Social Security number, if a number has been issued.

(iii) Proof of identity verified by a government-issued photo identification.

(iv) Date of birth.

(2) Background Screening Procedure for Ongoing Care of a Child.

(a) As part of the evaluation of capacity for ongoing care of a child, in addition to background screening required for Preliminary Placement, a relative and spouse or partner must complete an FBI national criminal history records check as prospective ~~[foster]~~out-of-home care or adoptive parents. A non-custodial parent will complete an FBI national criminal history check if Utah criminal history or SAFE child abuse checks result in concerns about potential threats of harm to the child or if ordered by the court.

(b) If a non-relative 18 years of age or older is residing in the home and has lived outside of the state of Utah in the five years immediately preceding the date of the application, the individual must complete an FBI national criminal history records check.

(c) If any person 18 years of age or older residing in the home has lived out of the state of Utah in the five years immediately preceding the date of the application, a child abuse and neglect registry check must be completed for any state in which the individual resided.

(d) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information on a form provided by Child and Family Services in order for background screening to be conducted:

- (i) Full first, middle, last, maiden, alias, and all previous married names.
- (ii) Social Security number, if a number has been issued.
- (iii) Proof of identity verified by a government-issued photo identification.
- (iv) Date of birth.
- (v) The potential kinship caregiver and applicable adults living in the household shall provide fingerprints from an authorized law enforcement agency or designated electronic scanning site.
- (vi) The child abuse registry for each state in which a potential kinship caregiver or other adult in the household has lived will be checked.

KEY: child welfare, kinship

Date of Enactment or Last Substantive Amendment: [~~August 21, 2008~~2010]

Notice of Continuation: August 20, 2008

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-209; 78A-6-307; 78A-6-307.5; 78A-6-308

Insurance, Administration R590-133 Variable Contracts

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34175
FILED: 10/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to update language, correct code citations, add a penalty and an enforcement section, and require a producer to be licensed as a variable contract producer in order to recommend the termination of a variable contract.

SUMMARY OF THE RULE OR CHANGE: The rule includes the following changes in language: "insurance code" to "title", "agent" to "producer", "which" to "that", "company" to "insurer", "National Association of Security Dealers" to "Financial Industry Regulatory Authority", and made it gender neutral. The Authority section has been broadened from just covering variable contracts issued by domestic companies to variable contracts issued by any insurer. The definition section has been broadened to include the definitions in Section 31A-1-301, and deletes the definition of "agent" in the rule. Two new sections have been added to the rule, a Penalties section and an Enforcement Date section. The rule

will now require producers be licensed as a variable contract producer in order to recommend to consumers that they terminate their variable contract.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-5-217.5

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There may be an increase in revenue if producers purchase the variable line of insurance license to be able to recommend that a person terminate their variable contract. The cost for this license is \$25 a year. Currently there are around 24,000 life agents. Some of these already have this limited line license. It is unknown how many may add this line to their license.
- ◆ **LOCAL GOVERNMENTS:** This rule will have no impact on local governments since it deals solely with the relationship between the department and their licensees.
- ◆ **SMALL BUSINESSES:** This could be a big impact on agencies who often pay for exams and license fees for their agents. The cost for a limited line insurance license would cost \$25. There would also be the cost for two securities license exams and a broker security license for a total of \$284. Currently there are around 24,000 life agents licensed to do business in Utah. Not all of these agents are actively selling life insurance products and some of them already have the limited line license so it is impossible to tell how many will obtain the limited license.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Those agents who are required to pay for the cost of the limited license and securities exam and license would be required to pay a total of \$309.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Agents or agencies who decide to obtain the limited line insurance license will pay \$309 for the cost of the limited license and securities exam and license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This could bring additional licensing revenues into the state and provide consumer protection. Agents who obtain the additional licensing will be more educated and able to direct their clients in regard to variable contracts.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 12/07/2010 03:00 PM, State Office Building, 450 N State, Rm 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-133. Variable Contracts.

R590-133-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement ~~[the Insurance Code]~~ Title 31A and ~~31A-5-217.5(6)~~ Subsection 31A-20-106(1)(b)(ii) ~~[which] that~~ gives the commissioner authority to regulate by rulemaking the issuance and sale of variable contracts.

R590-133-2. Definition.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

~~_____~~ A. ~~[The term "variable]~~ "Variable contract," ~~[shall mean] means~~ a ~~[ny]~~ policy or contract ~~[which] that~~ provides ~~[for]~~ life insurance or annuity benefits ~~[which] that~~ may vary according to the investment experience of any separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Sections 31A-5-217 and 31A-18-102.

B. ~~["Agent," when used in this rule, shall mean any person licensed as an agent, broker or consultant under the laws of this state.~~

~~_____~~ C. "Variable contract ~~[agent] producer," [when used in this rule, shall] means [an agent, broker and] a licensed producer or licensed consultant [who is licensed to sell or offer to sell any] with a variable contracts line of authority.~~

R590-133-3. Qualification of ~~[Insurance Companies]~~ Insurers to Issue Variable Contracts.

No ~~[company] insurer~~ may deliver or issue for delivery a variable contract[s] within this state unless ~~[it] the insurer~~ is licensed ~~[or organized]~~ to do a variable life, annuity, or both, business in this state in accordance with Section 31A-20-106.

R590-133-4. Governance of Separate Accounts.

All separate accounts shall be governed specifically by Sections 31A-5-217; 31A-5-217.5; 31A-18-102; 31A-20-106; 31A-21-301 and 31A-22-411 and this rule. They shall be governed generally by the provisions of the code applicable to life insurance companies not explicitly exempted by the code.

R590-133-5. Required Reports.

A. An ~~[y]~~ ~~[company] insurer~~ issuing an individual variable contract[s] providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at

~~[his] the~~ last address known to the ~~[company] insurer~~, a statement or statements reporting the investments held in the separate account.

B. The ~~[company] insurer~~ shall submit annually to the ~~[Insurance Commissioner] commissioner~~ a statement of the business of its separate account or accounts in a form as may be prescribed by the National Association of Insurance Commissioners.

C. An ~~[y]~~ ~~[company] insurer~~ issuing an individual variable contract[s] shall mail to the contract holder, at least once in each contract year after the first, at ~~[his] the~~ last address known to the ~~[company] insurer~~, a statement reporting as of a date not more than four months previous to the date of mailing:

(1) in the case of an annuity contract under which payments have not yet commenced:

(~~[i]~~) a) the number of accumulation units credited to the contract and the dollar value of a unit; or

(~~[i]~~) b) the value of the contract holder's account; and

(2) in the case of a life insurance policy, the dollar amount of the death benefit.

R590-133-6. Foreign ~~[Companies]~~ Insurers.

If the law or rule in the place of domicile of a foreign ~~[company] insurer~~ provides a degree of protection to the ~~[policyholders] contract holders~~ and the public ~~[which] that~~ is substantially equal to that provided by this rule, the commissioner, to the extent deemed appropriate ~~[by him]~~ in ~~[his] the~~ commissioner's discretion, may consider compliance with the law or rule as compliance with this rule.

R590-133-7. Licensing of ~~[Agents, Brokers and Consultants]~~ Variable Contract Producers.

~~(A) No [agent, broker] producer or consultant [may be] is~~ eligible to sell, ~~[or] offer for sale, or make a recommendation to purchase or terminate~~ a variable contract unless ~~[prior to making any solicitation or sale, he is]~~ licensed as a variable contract ~~[agent] producer prior to making a solicitation, sale, or recommendation.~~

(B) The licensing as a variable contract ~~[agent] producer~~ may not become effective until satisfactorily completing the following requirements:

(1) be licensed in the line of life insurance;

(2) evidence that the applicant has previously passed ~~[National Association of Security Dealers] Financial Industry Regulatory Authority~~ examinations series six or seven and 63. Approval of registration to take the examinations is not acceptable;

(3) evidence of being Utah approved from the ~~[National Association of Securities Dealers] Financial Industry Regulatory Authority~~, Central Registration Depository;

(4) if the applicant is a non-resident, requirements of the state of domicile may be acceptable; and

(5) every application for a license as a variable contract ~~[agent] producer~~ shall be accompanied by the appropriate fee designated in the fee schedule adopted by the legislature.

R590-133-8. Additional Provisions Applicable to Variable Contract ~~[Agents] Producers.~~

A. A ~~[ny]~~ person licensed in this state as a variable contract ~~[agent] producer~~ shall immediately report to the commissioner:

(1) any suspension or revocation of ~~[his]the~~ variable contract ~~[agent's]producer's~~ license or life insurance ~~[agent's]producer's~~ license in any other state or territory of the United States;

(2) the imposition of any disciplinary sanction imposed upon ~~[him]the~~ producer by any national securities exchange, or national securities association, or any federal, or state or territorial agency with jurisdiction over securities or contracts on a variable basis;

(3) any judgment or injunction entered against ~~[him]the~~ producer on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or rule.

B. The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract ~~[agent's]producer's~~ license upon any ground that would bar the application or ~~[agent]the~~ producer from being licensed to sell life insurance contracts in this state. The statutes governing any proceeding relating to the suspension or revocation of a life insurance ~~[agent's]producer's~~ license shall also govern any proceeding for suspension or revocation of a variable contract ~~[agent's]producer's~~ license.

C. Renewal of a variable contract ~~[agent's]producer's~~ license shall follow the same procedure established for renewal of ~~[an agent's]a~~ life insurance producer's license ~~[to sell life insurance contracts in this state].~~

R590-133-9. Disclosure.

(A). The following information shall be furnished to an applicant for a variable contract ~~[of variable life insurance]~~ prior to execution of the application:

(1) a summary description of the ~~[insurance company]insurer~~ and its principal activities;

(2) a summary explanation in non-technical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account;

(3) a brief description of the investment policy for the separate account with respect to the contract;

(4) a list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the commissioner of the state of domicile; and

(5) summary financial statements of the ~~[insurance company]insurer~~ and the separate account based upon the last annual statement filed with the commissioner, except that for a period of four months after the filing of any annual statement, the summary required may be based upon the annual statement~~[-]~~ immediately preceding the last annual statement~~[-]~~ filed with the commissioner.

B. The ~~[insurance company]insurer~~ may include ~~[any]~~ additional information as ~~[it]the~~ insurer deems appropriate.

R590-133-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-133-11. Enforcement Date.

The commissioner will begin enforcing this rule 30 days from the rule's effective date.

R590-133-12. 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 the rule and the application of the provisions may not be affected.

KEY: insurance law

Date of Enactment or Last Substantive Amendment:
~~[1994]2010~~

Notice of Continuation: January 12, 2007

Authorizing, and Implemented or Interpreted Law: 31A-2-201;
~~[31A-5-217.5]31A-20-106~~

Insurance, Administration **R590-167-4** Establishment of Classes of Business

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34169

FILED: 10/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is being made to correct an oversight and bring the compliance date in this section into alignment with the compliance date at the end of the rule.

SUMMARY OF THE RULE OR CHANGE: Subsection R590-167-4(3)(f) lists the compliance date to establish a new class of business approved by the commissioner as January 1, 2010. This was overlooked and was intended to be January 1, 2011, in the future rather than last January.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-30-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This change will have no fiscal impact on the department; the date of this change was meant to be January 1, 2011.

◆ **LOCAL GOVERNMENTS:** This change will have no fiscal impact on local governments since the rule deals solely with the relationship between the department and its licensees.

◆ **SMALL BUSINESSES:** The rule regulates insurers, that are large employers, who sell health benefit plans to individual

and small employers. The change requires insurers to receive approval from the commissioner for the establishment of additional classes of business after January 1, 2011, not 2010. It was meant to apply after the rule is put into effect and the changes become enforceable on January 1, 2011. There will be no fiscal impact as a result of this change.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule regulates insurers, that are large employers, who sell health benefit plans to individual and small employers. The change requires insurers to receive approval from the commissioner for the establishment of additional classes of business after January 1, 2011, not 2010. It was meant to apply after the rule is put into effect and the changes become enforceable on January 1, 2011. There will be no fiscal impact as a result of this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule regulates insurers, that are large employers, who sell health benefit plans to individual and small employers. The change requires insurers to receive approval from the commissioner for the establishment of additional classes of business after January 1, 2011, not 2010. It was meant to apply after the rule is put into effect and the changes become enforceable on January 1, 2011. There will be no fiscal impact as a result of this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on insurers who sell health benefit plans or small employer groups who purchase them for their employees.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.

R590-167-4. Establishment of Classes of Business.

(1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(b) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

(c) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(2) For policies issued or renewed on or after January 1, 2011, a covered carrier may not establish a separate class of business without a prior approval of the commissioner.

(3) In order to receive an approval to establish a separate class of business under Subsection R590-167-4(2) the covered carrier shall submit a filing in compliance with R590-220 that includes:

(a) a written request to establish a separate class of business;

(b) description of all criteria employed by the carrier, or any of its agents, for determining membership in the class of business;

(c) disclosure of which health benefit plans will be available for purchase in the class and any significant limitations related to the purchase of such plans; and

(d) demonstrate to the satisfaction of the commissioner that the use of a separate class of business is necessary due to substantial differences in either expected claims experience or administrative costs related to the following reasons:

(i) the covered carrier uses more than one type of system for the marketing and sale of health benefit plans to covered insureds;

(ii) the covered carrier has acquired a class of business from another covered carrier;

(iii) the covered carrier provides coverage to one or more association groups;

(e) a list of previously approved classes of business; and

(f) for each class of business used prior to January 1, ~~2010~~2011, a certification that the continued use of the class of business is necessary due to conditions specified in Subsection R590-167-4(3)(d).

(4) A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a class of business.

KEY: health insurance

Date of Enactment or Last Substantive Amendment: [~~October 4, 2010~~2011]

Notice of Continuation: September 10, 2009

Authorizing, and Implemented or Interpreted Law: 31A-30-106

**Money Management Council,
Administration**

R628-11

**Maximum Amount of Uninsured Public
Funds Allowed to Be Held by Any
Qualified Depository**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34208

FILED: 11/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to allow the Council to have the option to reduce a qualified depository's uninsured public funds down to the amount that the institution is holding if there is a formal enforcement action against them by a regulator or if there is a material change in the depository's financial status.

SUMMARY OF THE RULE OR CHANGE: A subsection has been added that gives the Council an option to drop a qualified depository institution's public funds down to the amount they are holding at the time they receive a formal enforcement action or if there is a material change in the institution's financial condition, if the Council chooses to do so.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 51-7-18.1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** If the Council chooses to use this option in the event of a formal enforcement action or a material change in the financial institution's financial status, it will be done in the context of a normal Council meeting. There would be minimal mailing costs associated with a notification of the action to public treasurers but would be covered under current budgets.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local government because the amendment does not involve any action by local government.

◆ **SMALL BUSINESSES:** The change does not involve any action by small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change does not involve any additional action by local government entities. It would not affect businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change does not affect any additional persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business.

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

MONEY MANAGEMENT COUNCIL
ADMINISTRATION
ROOM 180 UTAH STATE CAPITOL COMPLEX
350 N STATE ST
STE 180
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: William Wallace, Chair

R628. Money Management Council, Administration.

R628-11. Maximum Amount of Uninsured Public Funds Allowed to Be Held by Any Qualified Depository.

R628-11-4. Definitions.

For the purposes of this rule:

A. "Tier one capital" means:

(1) For a federally insured commercial bank, thrift institution, industrial loan corporation or a savings and loan association, the same as defined in the Federal Deposit Insurance Act in CFR Chapter III Section 325.2 or the Office of Thrift Supervision in CFR Chapter V Section 565.2;

(2) For a federally insured credit union, the sum of undivided earnings, regular reserves, appropriations of undivided earnings referred to as "other reserves", and net income not already included in undivided earnings.

B. "Deposits" means: balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

C. "Out of State" means: in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.

D. "Maximum amount" means: the amount of deposits in excess of the federal deposit insurance limit.

E. "Qualified depository" means: a Utah depository institution as defined in Subsection 7-1-103(36) or a out of state depository institution as defined in Subsection 7-1-103(25) which may conduct business in this state under Section 7-1-702, whose deposits are insured by an agency of the Federal Government and which has been certified by the Commissioner of Financial Institutions as having met the requirements to receive uninsured public funds.

F. "Transaction account" means: a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by check or other negotiable instrument, a payment order of withdrawal, a telephone transfer or other electronic transfer or by any other means or device to make payments or transfer to third persons. This term includes demand deposits, NOW accounts, savings deposits subject to automatic transfers, and share draft accounts.

G. "Utah depository institution" means: a depository institution which is organized under the laws of, and whose home office is located in, this state or which is organized under the laws of the United States and whose home office is located in this state.

R628-11-8. Frequency of Adjustment to the Uninsured Public Funds Allotment.

A. The uninsured public funds allotment for each qualified depository shall be established quarterly by the Council, based on the reports of condition filed with the Commissioner as of the close of the preceding quarter. The uninsured public funds allotments shall be established in accordance with the following:

TABLE 3

Report of Condition As Of:	Effective Date of Allotment
December 31	April 1
March 31	July 1
June 30	October 1
September 30	January 1

B. The Money Management Council may make interim adjustments in a qualified depository's uninsured public funds allotment if material changes in a qualified depository's financial condition have occurred or if there is a formal enforcement action by the federal or state regulator. These interim adjustments may include but are not limited to:

(1) reducing a qualified depository's uninsured public funds allotment to the amount of public funds held by the institution at the time of the Council's review of either the formal enforcement action or the review of the material changes in the qualified depositories financial condition;

(2) reducing a qualified depository's uninsured public funds allotment to zero if there is not sufficient collateral to cover uninsured public funds.

C. Any qualified depository that becomes subject to a formal enforcement action by any federal regulator shall notify the

Council within twenty-four hours of the publication of the action taken by a federal regulator. Failure of a qualified depository to comply with this requirement to notify the Council may result in action taken by the Council to require collateralization of uninsured public funds in accordance with Section 51-7-18.1(5) and Section R628-11-7.

D. When a formal enforcement action has been modified or terminated by a federal regulator, the qualified depository shall notify the Council within twenty-four hours of the publication of the modification or termination of any action.

KEY: financial institutions, banking law
Date of Enactment or Last Substantive Amendment: [April 27], 2010

Notice of Continuation: October 12, 2010
Authorizing, and Implemented or Interpreted Law: 51-7-18.1(2)

Natural Resources, Wildlife Resources
R657-13
Taking Fish and Crayfish

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 34167
 FILED: 10/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions clarify in rule that motorized aquatic vehicles may be used to take protected aquatic wildlife; prohibit the transportation of any species of baitfish from any water formally declared AIS infested or subject to a closure order or control plan; allow for the use of cast nets in the noncommercial take of nongame fish; and clarify that crayfish may be taken with hooks on two lines provided that the angler is in possession of a second pole permit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** These amendments only clarify existing rule with the exception of the transportation of baitfish from an infected water therefore, DWR determines that these amendments do not create a cost or savings impact to the

state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only clarifies regulations already in place this should have little to no effect on the local government. This filing does 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 create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment clarifies current rule, therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment clarifies current rule, therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments do not create a cost or savings impact to individuals who participate in spearfishing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-13. Taking Fish and Crayfish.

R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted while underwater spearfishing for burbot in Flaming Gorge.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(1)(c) and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing, except at Lake Powell where a gaff may be used to land striped bass. It is unlawful to possess a gaff at waters, except at Lake Powell.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, ~~[for fishing is unlawful]~~ to take protected aquatic wildlife is permitted on [some]many public waters. However, [B]boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(f) Dead mountain sucker, white sucker, Utah sucker, reidside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(10) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under R657-60, it shall be unlawful to transport any species of baitfish (live or dead) from the infested water for use as bait in any other water of the State. Baitfish are defined as those species listed in sections (5)(b),(5)(c),(5)(f) and (8).

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

- (i) San Juan River;
- (ii) Colorado River;
- (iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);
- (iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);
- (v) White River (Uintah County);
- (vi) Duchesne River (from Myton to confluence with Green River);
- (vii) Virgin River (Main stem, North, and East Forks).
- (viii) Ash Creek;
- (ix) Beaver Dam Wash;
- (x) Fort Pierce Wash;
- (xi) La Verkin Creek;
- (xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);
- (xiii) Diamond Fork;
- (xiv) Thistle Creek;
- (xv) Main Canyon Creek (tributary to Wallsburg Creek);
- (xvi) ~~[South Fork of]~~ Provo River (below Deer Creek Dam); ~~and~~
- (xvii) Spanish Fork River;
- (xviii) Hobble Creek (Utah County); and
- (xix) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by angling, traps, bow and arrow, liftnets, dipnets, cast nets, seine, spear or underwater spearfishing in the waters specified in Subsection R657-13-9(4).

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached[~~-{~~]. - except when an angler possesses a valid second pole permit in which case two hooked lines may be used. On unhooked lines, bait is tied to the line so that the crayfish grasps the bait with its claw[}]; and

(d) live crayfish are not transported from the body of water where taken.

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: ~~[December 10, 2009]~~2010

Notice of Continuation: October 11, 2007

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3

Natural Resources, Wildlife Resources **R657-58** Fishing Contests and Clinics

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34168

FILED: 10/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment will: 1) eliminate the 100th meridian test requirement; 2) require boaters to complete the "Mussel Aware Boater Program" online training and display the completed "decontamination certification form"; 3) require contest sponsors to ensure that all boat operators possess a completed "Mussel Aware Boater decontamination certification form"; and 4) adds Big Sandwash, Moose Pond, and Panguitch Lake to the list of waters approved for tagged fish contests.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment replaces the 100th meridian test with an online training and adds three waters to the tagged fish contest. DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only replaces one training with another this should have little to no effect on the local government. This filing does 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 create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment replaces one certification requirement with an online certification requirement so it does not impose an additional financial requirement on small businesses participating in a fishing contest.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment replaces one certification requirement with an online certification requirement so it does not impose an additional financial requirement on persons participating in a fishing contest.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments do not create a cost or savings impact to individuals who sponsor or participate in fishing contests.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-58. Fishing Contests and Clinics.

R657-58-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule to provide the standards and procedures for fishing contests and events including:

- a) Type I fishing contests;
- b) Type II fishing contests;
- c) tagged fish contests; and
- d) fishing clinics.

(2) Any violation of, or failure to comply with, any provision of this rule or any specific requirements in a Certificate of Registration issued pursuant to this rule may be grounds for revocation or suspension of the Certificate of Registration, as determined by the division.

R657-58-3. Certificate of Registration (COR) and General.

(1) ~~[A COR is required for all Type I fishing contests and all tagged fish contests. The requirements are listed in Sections R657-58-4 through R657-58-6.~~

~~_____ (2) An AIS Decontamination Certification Form found at http://wildlife.utah.gov/mussels/PDF/self_certify.pdf is required for all boating participants in fishing contests.] Regardless of the size or type of contest, ~~[The form must be completed by each boat operator and displayed in the windshield].~~ all boat operators must complete the Mussel Aware Boater Program online training provided at <https://dwrapps.utah.gov/wex/dbconnection.jsp?examnbr=504688>, and display the completed "decontamination certification form" on the dashboard of the boat transport vehicle for the duration of the fishing contest.~~

~~[[3]2] Regardless of the size or type of contest, the contest sponsor shall verify and confirm that all [boats]boat operators participating in the fishing contest possess a completed [AIS-]Mussel Aware Boater Program "[D]decontamination [E]certification [forms-]form".~~

~~(3) A COR is required for all Type I fishing contests and all tagged fish contests. The requirements are listed in sections R657-58-4 through R657-58-6.~~

(4) A COR is not required for Type II fishing contests and fishing clinics.

(5) A COR is valid for only one fishing tournament/tagged fish contest on one water.

(6) The division may request public comment before issuing a COR if, in the opinion of the division, the proposed

contest has potential impacts to the public or could substantially impact a public fishery.

(7)(a) A COR may be denied for:

- (i) failure to comply with the fishing proclamation and rule;
- (ii) potential for resource damage;
- (iii) location;
- (iv) occurrence on a legal holiday or Free Fishing Day;
- (v) public safety issues;
- (vi) conflicts with the public;
- (vii) failure to adequately protect state waters from invasive species;
- (viii) problems with the applicants prior performance record; and
- (ix) failure to comply with other state laws, including those applying to raffles and lotteries in Utah.

(b) The reason for denial will be identified and reported to the applicant in a timely manner. The division may impose conditions on the issuance of the Certification of Registration in order to achieve a management objective or adequately protect a fishery. Any conditions will be listed on the COR.

(8) All COR applications submitted for Type I fishing contests must include a written protocol for participants to disinfect boats and equipment to prevent the spread of aquatic nuisance species. The protocol must be consistent with division policy and rule.

(9)(a) COR applications are available at all division offices and online at the division's website.

(b) Applications must be received by the division at least 45 days prior to the contest. In some cases a public comment process may alter the 45-day COR review period.

(c) Variances to the COR review period may only be granted by the director.

(10) A COR application must include:

- (a) a copy of proposed rules for the contest, and
- (b) a complete schedule of entry fees, cash awards and prize values.

(11) Anyone conducting a Type I fishing contest or tagged fish contest must complete a post-contest report and that report must be received by the division within 30 days after the event is completed.

(12) Anyone conducting a Type I fishing contest or tagged fish contest who fails to obtain a COR or to follow the rules set by the division may be prohibited from conducting any fishing contests, and may be subject to other penalties.

R657-58-4. Requirements for Type I Fishing Contests for Warm Water Fish Species.

(1) A COR from the Division of Wildlife Resources is required for any Type I fishing contest for any warm water fish species.

(2) All participants' boats must be readily identifiable as such at a distance of 100 yards.

(3) ~~All participants must complete online training provided by the 100th Meridian Initiative for Preventing the Spread of Aquatic Nuisance Species as provided at <http://www.100thmeridian.org/certificate.asp> and must be in the possession of each participant through the duration of the fishing contest.~~

~~(4) Contestants may not possess fish species, numbers of fish, or sizes of fish that are in violation of the proclamation approved by the Utah Wildlife Board.~~

R657-58-6. Requirements for Tagged Fish Contests.

(1) A COR from the Division of Wildlife Resources is required to conduct any tagged fish contest, regardless of number of contestants or value of prizes or awards.

(2) All COR application for a tagged fish contest must be received by the division between December 1st and December 31st of the year prior to when the contest is to be held.

(3) If more than one application is received for a water in a year then a drawing will be held to select the applicant to receive the COR.

(4) Only one tagged fish contest per year may be held on any water approved for tagged fish contests.

(5) Tagged fish contests must have the start date and end date identified on the COR Application.

(6) Tagging of fish for tagged fish contests must be conducted only by division personnel, or by designated representatives working under the direct supervision of the division.

(7) Without prior authorization from the division, it is prohibited to:

- (a) tag, fin-clip or mark fish in any way, or
- (b) introduce tagged, fin-clipped or marked fish into a water.

(8) The organizer of a tagged fish contest will assume all responsibility for the contest and the purchase of tags and tagging equipment.

(9) Tagged fish contests are permitted only on the following waters and only for the fish species listed for those waters:

- (a) Big Sandwash (Duchesne County) for trout;
- ~~(b) Deer Creek Reservoir (Wasatch County) for trout;~~
- ~~([b]c) East Canyon Reservoir (Morgan County) for smallmouth bass;~~
- ~~([e]d) Echo Reservoir (Summit County) for yellow perch, trout;~~
- ~~([d]e) Flaming Gorge Reservoir (Daggett County) for burbot, lake trout;~~
- ~~([e]f) Gunlock Reservoir (Washington County) for crappie, bass;~~
- ~~([f]g) Hyrum Reservoir (Cache County) for yellow perch, trout;~~
- ~~([g]h) Lake Powell (Garfield, Kane and San Juan counties) for striped bass;~~
- ~~([h]i) Jordanelle Reservoir (Wasatch County) for yellow perch, trout, bass;~~
- ~~([i]j) Moose Pond (Daggett County) for trout;~~
- ~~(k) Millsite Reservoir (Emery County) for trout;~~
- ~~([j]l) Otter Creek Reservoir (Piute County) for trout;~~
- ~~([k]m) Palisade (Sanpete County) for trout;~~
- ~~([l]n) Piute Reservoir (Piute County) for trout;~~
- ~~([m]o) Quail Creek Reservoir (Washington County) for trout, bass;~~
- ~~([n]p) Red Fleet Reservoir (Uintah County) for trout, bluegill;~~
- ~~([e]q) Rockport Reservoir (Summit County) for yellow perch, trout;~~

([p]t) Sand Hollow Reservoir (Washington County) for bluegill, bass;
 ([e]s) Scofield Reservoir (Carbon and Utah counties) for rainbow trout;
 ([f]t) Starvation Reservoir (Duchesne County) for walleye;
 ([s]u) Steinaker Reservoir (Uintah County) for trout, bluegill;
 ([t]v) Utah Lake (Utah County) for white bass, carp;
 ([u]w) Willard Bay (Box Elder County) for carp, hybrid striped bass; and
 ([v]x) Yuba Reservoir (Juab and Sanpete counties) for walleye.

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment:
~~[December 10, 2009]~~2010

Authorizing, and Implemented or Interpreted Law: 23-14-18;
 23-14-19; 23-19-1; 23-22-3

Public Safety, Administration
R698-5
Hazardous Chemical Emergency
Response Commission

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34174

FILED: 10/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The State Hazardous Chemical Emergency Response Commission (SERC) met on 10/06/2010 and voted to amend Rule R698-5 by expanding the criteria used to evaluate the creation of a new Local Emergency Planning Committee (LEPC). The SERC also proposed to establish procedures for adjudicative proceedings in the event of an appeal from a decision made by the SERC.

SUMMARY OF THE RULE OR CHANGE: The summary of the proposed rule amendments are as follows: 1) in Subsection R698-5-2(2.5), the SERC proposes to add the definition of SERC Advisory Committee; 2) in Subsection R698-5-4(4.2), the SERC proposes to establish procedures to be followed by an agency requesting to be designated as an LEPC; 3) in Subsection R698-5-4(4.3), the SERC proposes to identify the procedures to be used by the SERC Advisory Committee in forming its recommendations; 4) in Subsection R698-5-4(4.4), the SERC proposes direction to itself when it

makes the final decision on the creation of an LEPC; and 5) in Section R698-5-5, the SERC proposes to establish an adjudicative proceedings section to allow an agency to have proper direction when filing an appeal on a decision of the SERC.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63K-3-301

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because these proposed rule amendments are procedural in nature. The only rare incidence would be if an LEPC appealed a decision of the SERC. This would require the full SERC together to hear the appeal of the LEPC.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed rule amendments do not impact local government and is procedural in nature.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because these proposed rule amendments are for direction in the setting up of LEPCs and adjudicative proceedings, and have nothing to do with small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to other persons because these proposed amendments are for setting up of LEPCs and adjudicative proceedings, and have nothing to do with other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons to implement these proposed rule amendments. The proposed amendments are procedural with regard to the establishment of LEPCs and also establish adjudicative proceedings to appeal the decision of the SERC.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses for the enactment of these proposed rule amendments. The proposed rule amendments are procedural for government established LEPCs and also to establish adjudicative proceedings.

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

PUBLIC SAFETY
 ADMINISTRATION
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W 1ST FLR
 SALT LAKE CITY, UT 84119-5994
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Lance Davenport, Commissioner

R698. Public Safety, Administration.

R698-5. Hazardous Chemical Emergency Response Commission.

R698-5-2. Definitions.

2.1 "Advisory Committee" means State Emergency Response Commission Advisory Committee.

2.2 "EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986.

2.3 "LEPC" means Local Emergency Planning Committee.

2.4 "SERC" means State Hazardous Chemical Emergency Response Commission.

2.5 "SERC Advisory Committee" means State Hazardous Chemical Emergency Response Commission Advisory Committee.

R698-5-4. Local Emergency Planning Committee.

4.1 The creation, modification or ~~dissolving~~ dissolution of an LEPC shall be approved by the SERC.

4.2 When evaluating the need to create an LEPC, the SERC Advisory Committee shall use the following criteria and procedures:

4.2.1 The jurisdiction requesting the formation of an LEPC shall provide to the SERC Advisory Committee a plan for coordinating the proposed additional LEPC with the county LEPC and/or any other city formed LEPC in that county.

4.2.2 The jurisdiction requesting the formation of an LEPC shall provide to the SERC Advisory Committee an assessment of the jurisdiction's population and hazardous materials risk, to include but not limited to fixed facilities, rail, highways, hazardous material pipelines.

4.2.3 The jurisdiction requesting the formation of an LEPC shall provide to the SERC Advisory Committee a determination of how that agency, if allowed to form an LEPC, would meet all federal LEPC standards as identified in 42 USC Chapter 116.

4.3 The SERC Advisory Committee shall evaluate the information submitted by the jurisdiction in accordance with Section 4.1 of these rules and shall make a recommendation to the SERC.

4.4 The SERC shall include the recommendation of the SERC Advisory Committee, all information submitted by the requesting agency, and the views of the county LEPC, in its decision to approve or disapprove the formation of a new LEPC.

4.2]5 The LEPC shall coordinate its overall planning and direction with the SERC. The SERC shall supervise the overall planning and direction of the LEPC.

4.3]6 The LEPC shall submit a copy of their hazardous materials emergency response plan to the SERC for review.

4.[4]7 The SERC shall approve the amount of US Department of Transportation Hazardous Materials Emergency Preparedness Grant funding to be given to each LEPC and shall establish criteria for that funding to be awarded.

R698-5-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the SERC shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

5.2 An agency whose request to create, modify or dissolve an LEPC is denied by the SERC shall have an opportunity for a hearing before the SERC if requested by that agency within 20 days after receiving notice.

5.3 All adjudicative proceedings, other than criminal prosecution taken by the SERC, shall commence in accordance with UCA, Section 63G-4-201.

5.4 The SERC shall act as the hearing authority, and shall convene after timely notice to all parties involved. The members of the SERC acting as the hearing authority shall consist of the Commissioner of Public Safety and the Executive Director of the Department of Environmental Quality. The SERC shall also be joined when acting as the hearing authority by a representative from the Attorney General's Office.

5.5 After acting as the hearing authority, the SERC shall direct the secretary to issue a signed order to the agency involved giving the decision of the SERC within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

5.6 Reconsideration of the SERC decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

5.7 Judicial review of all final SERC actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

KEY: state emergency response commission

Date of Enactment or Last Substantive Amendment: [~~August 26, 2009~~December 22, 2010

Authorizing, and Implemented or Interpreted Law: 63K-3-301

Public Service Commission,
Administration
R746-360-8

Calculation of Fund Distributions in
Rate-of-Return Incumbent Telephone
Corporation Territories

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 34176
FILED: 10/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment deletes a single word from the rule. Subsection R746-360-8(A)(1)(a)(iii) mistakenly refers to a "September" filing of FCC Form 492A. The FCC's rules do not call for a "September" filing of Form 492A for price cap carriers. Deleting the word "September" will eliminate potential confusion about the identity of the report to which the rule refers.

SUMMARY OF THE RULE OR CHANGE: The pertinent part of the rule describes the method for calculating the amount of distribution from the Universal Public Telecommunications Service Support Fund to which an incumbent telephone corporation is entitled. The change clarifies the FCC report to be used as the source for the interstate rate of return on capital used in the calculation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 47 CFR Part 36 and Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendment is a technical clarification and will have no budget or financial impact.
- ◆ **LOCAL GOVERNMENTS:** The amendment is a technical clarification and will have no budget or financial impact.
- ◆ **SMALL BUSINESSES:** The amendment is a technical clarification and will have no budget or financial impact.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendment is a technical clarification and will have no budget or financial impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment will not create compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment deletes a single word from the rule in order to clarify the identity of the FCC report to which it refers. It will not produce cost or budget impacts.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.**R746-360. Universal Public Telecommunications Service Support Fund.****R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.**

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. "Total embedded costs" shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b) (i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent [September] FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

KEY: public utilities, telecommunications, universal service fund

Date of Enactment or Last Substantive Amendment: [November 1, 2009]2010

Notice of Continuation: November 25, 2008

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-7-25; 54-7-26; 54-8b-12; 54-8b-15

**Workforce Services, Employment
Development
R986-200
Family Employment Program**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 34172
FILED: 10/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These proposed amendments change the Department's diversion and temporary cash assistance programs.

SUMMARY OF THE RULE OR CHANGE: Diversion is intended as a one-time payment to help a client with nonrecurrent needs. It is not intended for individuals who have ongoing needs. Payment will be made initially and the Department will not provide case management services because these individuals do not need assistance on an ongoing basis. Temporary Cash Assistance is intended to help people transition off the Family Employment Program when the client has obtained employment. These changes are being made to count income instead of hours worked and to require the client to continue cooperating with the Office of Recover Services on child support issues.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-3-302(5)(b) and Subsection 35A-4-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to any local government.
- ◆ **SMALL BUSINESSES:** This is a federally-funded program so there are no costs or savings to any small business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no fees associated with this program and it is federally funded. There are no compliance costs for affected persons.

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.

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 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 NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Kristen Cox, Executive Director

**R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-216. Diversion.**

- (1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.
- (2) In determining whether a client should receive diversion assistance, the Department will consider the following:
 - (a) the applicant's employment history;
 - (b) the likelihood that the applicant will obtain immediate full-time employment;
 - (c) the applicant's housing stability; and
 - (d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment ~~[may not exceed]~~will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, ~~[and]~~the client ~~[later decides to reapply for financial assistance within]~~is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period. ~~[of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.]~~

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned ~~[or unearned]~~ income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a reduction or termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA, ~~[and]~~

(b) be employed and earning a wage greater than the FEP or FEP TP income guideline and the FEP or FEP TP assistance was terminated because of that income, and ~~[average of 30 hours per week for FEP households. The parents in a FEPTP household~~

~~cannot combine hours for TCA. Each parent must be employed 30 hours per week.]~~

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2) (b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed and be earning wages greater than the FEP or FEP TP income guidelines or have had an open FEP case that closed during the prior month due to income earned at that same amount.

~~_____ [(5)]6~~ If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

~~_____ [(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.~~

~~_____ [(7) TCA does not count toward the 36 month time limit found in R986-200-217.~~

KEY: family employment program

Date of Enactment or Last Substantive Amendment: [July 1, 2010

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

Workforce Services, Employment Development **R986-700** Child Care Assistance

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34173

FILED: 10/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Child care will no longer be available to support diversion.

SUMMARY OF THE RULE OR CHANGE: Diversion is intended as a one-time payment to help a client with nonrecurrent needs. It is not intended for individuals who have ongoing needs. Payment will be made initially and the Department will not provide case management services or child care because these individuals do not need assistance on an ongoing basis. If the client is eligible for employment support child care, the client can receive child care under the provisions of employment support even if the client received a diversion payment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to any local government.
- ◆ **SMALL BUSINESSES:** This is a federally-funded program so there are no costs or savings to any small business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded.

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.

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 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 NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during[:

~~_____ (a) the months covered by a FEP diversion payment;~~

~~_____ (b)] transitional child care. Transitional child care is available during[:~~

~~_____ (i) the six months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the period covered by the diversion payment; or~~

~~_____ (ii)] the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.~~

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP[, and Diversion] CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.[

~~_____ (3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.]~~

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC[~~or Diversion CC~~] may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child

care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning \$500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

KEY: child care

Date of Enactment or Last Substantive Amendment: [~~April 21~~, 2010

Notice of Continuation: September 8, 2010

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.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends December 15, 2010.

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.

From the end of the 30-day waiting period through March 15, 2011, an 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 the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. 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** by the end of the 120-day period after publication, 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 Section 63G-3-303; 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

**Insurance, Administration
R590-93
Replacement of Life Insurance and
Annuities**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 34026

FILED: 10/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to a suggestion received during the comment period, the department has decided to make a further change to the rule.

SUMMARY OF THE RULE OR CHANGE: The changes clarify that an indirect replacement is a violation of this rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the September 15, 2010, issue of the Utah State Bulletin, on page 59. 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.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-23a-402

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The changes to this rule will have no fiscal impact on the department or the state budget. The changes are for clarification purposes only.
- ◆ LOCAL GOVERNMENTS: This rule will have no fiscal impact on local governments since it deals only with the relationship between the department and its licensees.
- ◆ SMALL BUSINESSES: The changes will have no fiscal impact on small businesses. The intent of the change is to clarify the violation of indirectly replacing a life or annuity contract.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes will have no fiscal impact on businesses or local governments. The intent of the change is to clarify the violation of indirectly replacing a life or annuity contract. The additional wording will strengthen the consumer protection aspect of this rule by clarifying indirect sales of life and annuity policies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes will have no fiscal impact on businesses or local governments. The intent of the change is to clarify the violation of indirectly replacing a life or annuity contract. The additional wording will strengthen the consumer protection aspect of this rule by clarifying indirect sales of life and annuity policies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in wording will strengthen the consumer protection aspect of this rule and will have no fiscal impact on businesses.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.
R590-93. Replacement of Life Insurance and Annuities.**

.....

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

- (a) any deceptive or misleading information set forth in sales material;
- (b) failing to ask the applicant in completing the application the pertinent questions regarding existing policies or contracts and whether the proposed insurance will replace, discontinue, or change an existing policy or contract;
- (c) the intentional incorrect recording of an answer;
- (d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer;

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company; or

(f) advising a policy or contract holder to obtain policy values from an existing policy or contract with the intent to indirectly replace the policy or contract without complying with the requirements of this rule.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

.....

KEY: life insurance, annuity replacement
Date of Enactment or Last Substantive Amendment: 2010
Notice of Continuation: April 15, 2009
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Community and Culture, Library **R223-2** Public Library Online Access for Eligibility to Receive Public Funds

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 34170
FILED: 10/25/2010

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 Utah State Library Division, Department of Community and Culture, adopts this rule in accordance with Sections 63G-3-101 et seq., and 9-7-213, 9-7-215, 9-7-216, and 9-7-217, for the purpose of determining public library eligibility to receive state funds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is essential to implement the state statutes cited above, and provide guidance to appropriate library agencies regarding compliance with applicable statute to maintain eligibility to receive state funds.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
LIBRARY
ROOM A
250 N 1950 W
SALT LAKE CITY, UT 84116-7901
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Stephen Matthews by phone at 801-715-6722, by FAX at 801-715-6767, or by Internet E-mail at smatthews@utah.gov

AUTHORIZED BY: Donna Morris, Director

EFFECTIVE: 10/25/2010

Money Management Council, Administration **R628-12** Certification of Qualified Depositories for Public Funds

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 34193
FILED: 11/01/2010

**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: Under Subsection 51-7-3(28), defining the term "qualified depository" it is stated that a Utah depository may be certified to hold public funds by the commissioner of financial institutions if they have met the requirements under the Money Management Act (Title 51, Chapter 7) and rules of the council. Under Subsection 51-7-18(2)(b), it is stated that the council may make rules governing conditions and procedures for maintaining and revoking a financial institution's designation as a qualified depository.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statute requires that there be rules in place to govern deposits of Utah public funds in Utah financial institutions. This rule needs to be continued to provide criteria for financial institutions to become qualified to hold Utah public funds. If this rule were not in place, public entities would not be able to use financial institutions to deposit funds.

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

MONEY MANAGEMENT COUNCIL
ADMINISTRATION
ROOM 180
UTAH STATE CAPITOL COMPLEX
350 N STATE ST
STE 180
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: William Wallace, Chair

EFFECTIVE: 11/01/2010

**Natural Resources, Wildlife Resources
R657-5
Taking Big Game**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34183

FILED: 11/01/2010

**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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 supporting or opposing Rule R657-5 were received since November 2005, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-5 provides the procedures, standards, and requirements for taking big game. The provisions adopted in this rule are effective in providing the standards and requirements for taking big game. Continuation of this rule is necessary for continued success of this program.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 11/01/2010

Natural Resources, Wildlife Resources
R657-17
Lifetime Hunting and Fishing License

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34184
FILED: 11/01/2010

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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 supporting or opposing Rule R657-17 were received since November 2005 when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-17 provides the procedures, standards, and requirements for issuing lifetime hunting and fishing licenses. The provisions adopted in this rule are effective in providing the standards and requirements for using lifetime hunting and fishing licenses. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 11/01/2010

Natural Resources, Wildlife Resources
R657-38
Dedicated Hunter Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34185
FILED: 11/01/2010

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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 supporting or opposing Rule R657-38 were received since November 2005 when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-38 provides the procedures, standards, and requirements for participating in the Dedicated Hunter program. The provisions adopted in this rule are effective in providing the standards and requirements for Dedicated Hunters. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 11/01/2010

Natural Resources, Wildlife Resources
R657-41
Conservation and Sportsman Permits

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 34187
FILED: 11/01/2010

**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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 supporting or opposing Rule R657-41 were received since November 2005 when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-41 provides the procedures, standards, and requirements for issuing Conservation and Sportsman permits. The provisions adopted in this rule are effective in providing the standards and requirements for groups to obtain and use Conservation and Sportsman permits. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 11/01/2010

Natural Resources, Wildlife Resources
R657-56
Recreational Lease of Private Lands for
Free Public Walk-in Access

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 34188
FILED: 11/01/2010

**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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 supporting or opposing Rule R657-56 were received since November 2005 when the rule was created.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-56 provides the procedures, standards, and requirements for allowing public access to private lands for hunting and fishing purposes. The provisions adopted in this rule are effective in providing the standards and requirements for allowing public use of private lands. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 11/01/2010

Public Service Commission,
Administration
R746-341
Lifeline/Link-up Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34159
FILED: 10/18/2010

**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 establishes how the Public Service Commission carries out its duties under Section 214 of the Federal Communications Act to oversee Lifeline telecommunications service enrollment. Under Section 54-8b-2, access to Lifeline service is part of "basic residential service".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received since the last five-year review in 2005.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets out eligibility, service, and funding requirements. This rule must be continued in order to maintain the Lifeline program for low-income customers.

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 by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 10/18/2010

Public Service Commission,
Administration
R746-407
Annualization of Test-Year Data

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34158
FILED: 10/18/2010

**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 pertains to Subsection 54-4-4(3) which describes the Public Service Commission's use of test year data to set just and reasonable utility rates. The rule provides direction on how test year data may be adjusted to reflect partial-period effects of test year events.

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 Commission has received no written comments since the last five-year review in 2005.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In the traditional cost of service approach to ratemaking, it is generally assumed that utilities have a right to charge rates that will provide a reasonable opportunity to recover costs prudently incurred in the process of providing utility services. There is little challenge to the position that recovery of these costs is justified, and that the objective of the ratemaking process is to produce rates that will do so. The primary difficulty in meeting this objective is in determining the levels of costs to be incurred and the rate levels required to maintain cost recovery. The approach used by the regulators (the Commission) is to measure the total costs incurred in conducting operations over a 12-month period (i.e., the test period cost of service) and to fix rates that will produce revenues to match costs of that period. Since the test period is the basis for setting rates, the development of adequate test period data is obviously crucial to the outcome of the regulatory process. If the data do not accurately express operating conditions for the period in which rates are applied to recover costs, the rates will not function as intended. As stated in Subsection R746-407-1(A), "This rule will enable the Commission to more accurately coordinate a utility's rates with the utility's anticipated revenues and costs by recognizing that some of the

conditions which arise during a test period are ongoing and must be spread over the entire period." Because of the use of test period operations as a measure of future operations to establish future rates, the need to focus on the quality of the test period data continues to be necessary, and 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 by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 10/18/2010

**Tax Commission, Auditing
 R865-21U
 Use Tax**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 34177
 FILED: 10/28/2010

**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 59-12-103 imposes a tax on sales and uses of tangible personal property and services, but leaves unclear how the two taxes work together. Section 59-12-103 also imposes a use tax on tangible personal property stored in the state, but does not define when goods are stored in the state, nor does it address the issue of incidental first use of the property outside the state. Section 59-12-107 places responsibility for collecting use tax upon vendors, but does not provide adequate detail to determine if a taxable use has occurred, and is silent on the issue of whether the vendor should collect use tax on goods purchased in interstate commerce but stored, used, or consumed within the state. Section 59-12-107 also imposes a use tax upon users if a sales or use tax was not collected

by the vendor, but does not provide detail on how the user should pay or account for those payments. Section 59-12-118 gives the Tax Commission rulemaking authority to administer the sales and use tax.

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 comment have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-21U-1 clarifies the purpose of the use tax and when the use tax applies. Section R865-21U-2 clarifies that all rules promulgated for sales taxes are applicable to use taxes. Section R865-21U-3 clarifies when vendors are required to collect use tax. Section R865-21U-6 sets forth a purchaser's responsibilities with regard to payment of and accounting for use tax. Section R865-21U-15 clarifies that incidental first use of tangible personal property outside the state will be subject to Utah use tax. Section R865-21U-16 clarifies that use tax is required on goods sold in interstate commerce but stored, used, or consumed within the state. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

EFFECTIVE: 10/28/2010

**Tax Commission, Collections
 R867-2B
 Delinquent Tax Collection**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 34178
 FILED: 10/28/2010

**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 59-1-302 allows the Tax Commission to impose a penalty upon the officers/directors or a corporation for unpaid tax. The rule clarifies that the Tax Commission may impose a lien for those penalties if they remain unpaid. Sections 59-1-701 and 59-1-702 allow the Tax Commission to make a jeopardy assessment if certain grounds are met. Section 59-1-703 provides that property seized under a jeopardy assessment may be sold prior to the close of appeals on the assessment if certain conditions are met. Section 59-19-104 requires the Tax Commission to adopt a uniform system of affixing and displaying drug stamps for marijuana and controlled substances on which a tax is imposed.

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 comment have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R867-2B-1 clarifies that certain

individuals may be subject to a tax lien. Section R867-2B-2 clarifies that assessments made pursuant to the Illegal Drug Stamp Act shall be presumed to meet the grounds required for the jeopardy assessment provided for under Title 59, Chapter 1, Part 7. Section R867-2B-3 clarifies the procedures the Tax Commission follows prior to sale of property seized under a jeopardy assessment. Section R867-2B-4 sets forth a uniform system of affixing and displaying drug stamps on marijuana and controlled substances for which a tax is imposed under Title 59, Chapter 19. Therefore, this rule should be continued.

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

TAX COMMISSION
COLLECTIONS
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

EFFECTIVE: 10/28/2010

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

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 (Section 63G-3-305). 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 63G-3-305. 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 Subsection 63G-3-305(8).

Health, Health Systems Improvement,
Primary Care and Rural Health
R434-50
Assistance for People with Bleeding
Disorders

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 34186

FILED: 11/01/2010

SUMMARY: Because a five-year review was not filed by the deadline of 10/31/2010, the rule has expired and is removed from the Administrative Code.

EFFECTIVE: 11/01/2010

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 33972 (AMD): R156-17b-310. Exemption from
Licensure - Physicians Dispensing Cosmetic Drug or
Injectable Weight Loss Drug
Published: 09/15/2010
Effective: 10/22/2010

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 34035 (AMD): R414-1-7. Aliens
Published: 09/15/2010
Effective: 11/01/2010

No. 34047 (AMD): R414-50. Dental, Oral and Maxillofacial
Surgeons
Published: 09/15/2010
Effective: 11/01/2010

No. 34033 (AMD): R414-61. Home and Community-Based
Services Waivers
Published: 09/15/2010
Effective: 11/01/2010

No. 34034 (AMD): R414-61. Home and Community-Based
Services Waivers
Published: 09/15/2010
Effective: 11/01/2010

No. 34048 (AMD): R414-306-4. Effective Date of Eligibility
Published: 09/15/2010
Effective: 11/01/2010

No. 34049 (AMD): R414-308-4. Verification of Eligibility and
Information Exchange
Published: 09/15/2010
Effective: 11/01/2010

Housing Corporation (Utah) Administration

No. 34019 (AMD): R460-3. Programs of UHC
Published: 09/15/2010
Effective: 10/22/2010

Judicial Performance Evaluation Commission Administration

No. 33987 (NEW): R597-2. Administration of the
Commission
Published: 09/15/2010
Effective: 10/22/2010

No. 33961 (AMD): R597-3. Judicial Performance
Evaluations
Published: 09/15/2010
Effective: 10/22/2010

Labor Commission

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No. 34022 (AMD): R614-1-4. Incorporation of Federal
Standards
Published: 09/15/2010
Effective: 10/22/2010

Boiler and Elevator Safety
No. 34027 (AMD): R616-2-8. Inspection of Boilers and
Pressure Vessels
Published: 09/15/2010
Effective: 10/22/2010

No. 34023 (AMD): R616-2-15. Deputy Boiler/Pressure
Vessel Inspectors
Published: 09/15/2010
Effective: 10/22/2010

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Oil, Gas and Mining; Oil and Gas
No. 34010 (REP): R649-4. Determination of Well Categories
Under the Natural Gas Policy Act of 1978.
Published: 09/15/2010
Effective: 10/27/2010

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No. 34024 (NEW): R651-637. 2011 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt

Published: 09/15/2010

Effective: 10/26/2010

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No. 34014 (AMD): R657-9. Taking Waterfowl, Common Snipe and Coot

Published: 09/15/2010

Effective: 10/25/2010

No. 34017 (AMD): R657-10. Taking Cougar

Published: 09/15/2010

Effective: 10/25/2010

No. 34016 (AMD): R657-11. Taking Furbearers

Published: 09/15/2010

Effective: 10/25/2010

No. 34018 (AMD): R657-24. Compensation for Mountain Lion, Bear or Eagle Damage

Published: 09/15/2010

Effective: 10/25/2010

No. 34015 (AMD): R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents

Published: 09/15/2010

Effective: 10/25/2010

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No. 33881 (AMD): R710-3. Assisted Living Facilities

Published: 09/01/2010

Effective: 10/18/2010

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No. 33967 (NEW): R722-300. Concealed Firearm Permit and Instructor Rule

Published: 09/15/2010

Effective: 10/22/2010

No. 33966 (AMD): R722-310. Regulation of Bail Bond Recovery and Enforcement Agents

Published: 09/15/2010

Effective: 10/22/2010

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No. 34001 (AMD): R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories

Published: 09/15/2010

Effective: 10/25/2010

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No. 33988 (AMD): R850-110. Off-Highway Vehicle Designations

Published: 09/15/2010

Effective: 10/25/2010

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No. 34054 (AMD): R986-200. Family Employment Program

Published: 09/15/2010

Effective: 11/01/2010

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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, 2010 through November 01, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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ABBREVIATIONS

AMD = Amendment	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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R21-3	Debt Collection Through Administrative Offset	33778	NSC	07/26/2010	Not Printed
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R23-22-7	Requirements for the Disposition of Real Property by DFCM	33683	NSC	07/08/2010	Not Printed
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R35-1-4	Committee Minutes	33436	NSC	05/17/2010	Not Printed
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R37-2	Risk Management State Workers' Compensation Insurance Administration	33392	NSC	03/10/2010	Not Printed
R37-3	Risk Management Adjudicative Proceedings	34028	NSC	10/21/2010	Not Printed
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	33393	AMD	06/01/2010	2010-6/6

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R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons	33895	AMD	10/12/2010	2010-17/12
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R131-9	State Capitol Preservation Board Art Program and Policy	33550	NSC	04/26/2010	Not Printed
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R131-13	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	33843	AMD	09/22/2010	2010-16/4
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R131-15	State Construction Contracts and Drug and Alcohol Testing	33845	NEW	09/22/2010	2010-16/7
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R156-20a	Environmental Health Scientist Act Rule	33812	5YR	07/06/2010	2010-15/70
R156-24b	Physical Therapy Practice Act Rule	33584	AMD	06/21/2010	2010-10/17
R156-31b	Nurse Practice Act Rule	33631	AMD	07/08/2010	2010-11/78
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R156-31c	Nurse Licensure Compact Rule	33705	AMD	08/16/2010	2010-13/26
R156-37	Utah Controlled Substances Act Rules	33665	NSC	06/14/2010	Not Printed
R156-37-301	License Classifications - Restrictions	33264	AMD	02/08/2010	2010-1/11
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R277-410-1	Definitions	34036	NSC	10/21/2010	Not Printed
R277-411-1	Definitions	34037	NSC	10/21/2010	Not Printed
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R277-438-1	Definitions	34040	NSC	10/21/2010	Not Printed
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R277-469-7	Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluations of Core Curriculum	33903	NSC	09/21/2010	Not Printed
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R277-472	Charter School Student Enrollment and Transfers and School District Capacity Information	33902	NSC	09/21/2010	Not Printed
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R277-473	Testing Procedures	33744	AMD	08/09/2010	2010-13/61
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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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	33543	R131-1	NSC	04/26/2010	Not Printed
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	33684	R616-3-6	NSC	06/14/2010	Not Printed
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	33816	R728-409	R&R	09/09/2010	2010-15/49
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	33745	R277-480	NEW	08/09/2010	2010-13/64
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	33231	R861-1A-43	AMD	01/21/2010	2009-24/90
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	34091	R861-1A-31	NSC	10/18/2010	Not Printed
	33637	R861-1A-42	NSC	05/27/2010	Not Printed
	33231	R861-1A-43	AMD	01/21/2010	2009-24/90
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	33687	R606-4	5YR	05/28/2010	2010-12/73
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	34093	R309-105-12	NSC	10/18/2010	Not Printed
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	33828	R309-115	NSC	07/28/2010	Not Printed
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	33847	R309-215-16	AMD	09/21/2010	2010-16/11
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	33458	R309-220-5	NSC	03/29/2010	Not Printed
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	33482	R309-400	5YR	03/22/2010	2010-8/48
	34092	R309-400	NSC	10/18/2010	Not Printed
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	33836	R710-9	AMD	09/07/2010	2010-15/47	
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	33643	R865-6F-28	NSC	05/27/2010	Not Printed
	33861	R865-6F-29	NSC	08/25/2010	Not Printed
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	33708	R325-5-17	AMD	08/09/2010	2010-13/82
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