

# UTAH STATE BULLETIN

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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, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. 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**

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

### **Notice for November 2012 Medicaid Rate Changes**

Effective November 1, 2012, 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. 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

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 15, 2012, 12:00 a.m., and October 01, 2012, 11:59 p.m. are included in this, the October 15, 2012 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 Rules being repealed are completely struck out.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 November 14, 2012. 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 February 12, 2013, 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.

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

Commerce, Consumer Protection  
**R152-22-6**  
 Application for Professional Fund  
 Raiser, Fund Raising Counsel or  
 Consultant Permit

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36903

FILED: 10/01/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is necessary to accommodate for the licensure of fund raisers that operate exclusively online.

**SUMMARY OF THE RULE OR CHANGE:** The amended rule allows for professional fund raisers that operate exclusively online to submit copies of contracts executed electronically instead of requiring hard copies of contracts they enter into with charitable organization.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 13-2-5 and Section 13-22-9

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The state budget will not be affected by allowing for the submission of contracts executed online.
- ◆ **LOCAL GOVERNMENTS:** Local government will not be affected by allowing for the submission of contracts executed online.
- ◆ **SMALL BUSINESSES:** Small businesses that engage in charitable fund raising online will be able to submit the electronic contracts executed online instead of producing hard copies of those contracts.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons or organizations that engage in charitable fund raising online will be able to submit the electronic contracts executed online instead of producing hard copies of those contracts.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Allowing for the submission of electronically executed contracts instead of requiring hard copies of contracts as a condition to licensure in the state should cut down on the compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As stated in the rule analysis, the proposed amendment recognizes an electronic contract as satisfying the licensure requirements in circumstances where a fund raiser operates

exclusively online. No fiscal impact to businesses is anticipated from this filing.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Traci Gunderson, Director

**R152. Commerce, Consumer Protection.**

**R152-22. Charitable Solicitations Act.**

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

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

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

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

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

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

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

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

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

(g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated

by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

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

(4) Professional fund raisers that provide services only through online or web-based software may submit a copy of the terms and conditions that all users must agree to along with evidence demonstrating that a user accepted the terms and conditions.

**KEY: charities, consumer protection, solicitations**  
**Date of Enactment or Last Substantive Amendment: [~~April 2, 2007~~2012**

**Notice of Continuation: March 22, 2012**

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

## Commerce, Consumer Protection **R152-23** Utah Health Spa Services

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36904

FILED: 10/01/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Health spa business models have evolved in this state making it necessary to clarify the class of consumers protected by the Health Spa Services Protection Act. Proof of liability insurance was added as a requirement for licensure.

**SUMMARY OF THE RULE OR CHANGE:** References to members and memberships were changed to reference consumers of health spa services and the contractual obligations for health spa services permissible under the Health Spa Services Protection Act.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 13-2-5 and Section 13-23-1 and Section 63G-3-201

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The state budget will not be affected by clarifying the consumers that are entitled to protection under the Health Spa Services Protection Act.

◆ **LOCAL GOVERNMENTS:** Local government will not be affected by clarifying the consumers that are entitled to protection under the Health Spa Services Protection Act.

◆ **SMALL BUSINESSES:** Health spas that qualify as small businesses will not be affected by clarifying the consumers that are entitled to protection under the Health Spa Services Protection Act. The proof of insurance requirement will only affect small business health spas that have not or do not

currently carry liability insurance. It is doubtful that small businesses would engage in a risky enterprise such as health spa services without insuring against the risks associated with offering such services, so the Division anticipates that this requirement will affect very few, if any, health spas.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Consumers that enter into contracts for health spa services that are not the traditional gym membership arrangements will more clearly fall under the protection of the Health Spa Services Protection Act.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proof of insurance requirement will impact affected persons that have not or do not currently carry liability insurance. It is doubtful that businesses would engage in a risky enterprise such as health spa services without insuring against the risks associated with offering such services, so the Division anticipates that this requirement will not increase the compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As stated in the rule analysis, the proposed amendments clarify existing rules as to the class of consumers protected by the Health Spa Services Protection Act and the specific acts that are required or prohibited in order to afford that protection. The costs to businesses of obtaining liability insurance are anticipated to be minimal and are unavoidable if the protections contemplated by the statute are to be implemented.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Traci Gunderson, Director

**R152. Commerce, Consumer Protection.**

**R152-23. Utah Health Spa Services.**

**R152-23-1. Authority.**

These Rules are promulgated in accordance with the provisions of Section 63G-3-201 and Section 13-2-5, Utah Code Ann.

(1953), as amended, to prescribe for the administration of the Health Spa Services Protection Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended.

#### **R152-23-2. Scope and Applicability.**

These rules shall apply to the conduct of every [Health Spa]health spa within the State of Utah.

#### **R152-23-3. Definitions.**

In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.

(1) "Advance Sales" shall mean sales of [membership]consumer contracts on any date prior to the date a health spa facility becomes fully operational and available for use.

(2) "Costs" shall mean those costs incurred by the Division in investigating complaints, in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the Health Spa Services Protection Act or these Rules.

(3) "Facility" means the physical building where the health spa services are provided.

(4) "Operate" means to advertise health spa services, to sell memberships, or to perform any other function of business by a [Health Spa]health spa that is doing business in Utah.

(5) "Personal Trainer" means an individual who is a health spa under Section 13-23-2 because the individual (1) hires another individual, either as an employee or an independent contractor, to provide instruction to assist patrons to improve their physical condition or appearance through aerobic conditioning, strength training, fitness training or other exercise, and (2) is granted the use of a facility that contains exercise equipment.

#### **R152-23-4. Registration Requirements.**

(1) A [Health Spa]health spa may not operate in this state without first having received a registration permit from the Division. ~~[The application for a permit shall be completed on the form provided by the Division.]~~ Each health spa entity shall obtain a registration permit prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services.

(2) The application shall request the following items:

(a) Name, addresses, email address and telephone numbers of owner(s) of the [Health Spa]health spa Facility and the facility address, telephone number, email address, and name of contact person at the facility.

(b) Payment of the non-refundable application fee.

(c) A current pricing structure for [membership]health and fitness services.

(d) A copy of the contract that will be utilized by the facility containing the provisions required by law. The required provisions shall be highlighted for easy reference.

(e) The documents necessary to satisfy the surety requirement of Section 13-23-5(2)(a). If the [Health Spa]health spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-6 is satisfied.

(f) The number of [membership]consumer contracts that relate to each facility.

(g) The name, address, email address, and telephone number of each Personal Trainer who will use the [Health Spa's]health spa's facilities during the year.

(h) The company name and contact information for a third party billing and management provider, if used.

(i) Evidence that the health spa facility maintains current liability or professional liability insurance.

(3) A separate registration shall be required for each facility that is maintained and operated by a [Health Spa]health spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the [Health Spa]health spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

#### **R152-23-5. Health Spa [Membership—Contracts]Consumer Contracts for Health Spa Services.**

(1) Health Spa [membership]consumer contracts shall contain the following provisions:

(a) Each [membership]consumer contract shall contain:

(i) the date of the transaction, including the date health spa services will commence and expire;

(ii) the name and address of the [Health Spa]health spa facility; and

(iii) the name, address, email address (if available), and telephone number of the consumer.

(b) Each [membership]consumer contract shall contain one of the following provisions, printed in capital letters, regarding closure of the facility:

(i) A [Health Spas]health spa that [are]is required to comply with the surety requirement shall [contain]include a provision in consumer contracts that states as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER OF THIS CONTRACT, OR ASSIGNS OF THE SELLER, [OF THIS CONTRACT] IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE [MEMBER]CONSUMER INTENDS TO PATRONIZE, SELLER WILL REFUND TO [MEMBER]CONSUMER A PRORATA SHARE OF THE [MEMBERSHIP]CONTRACT COST, BASED UPON THE UNUSED [MEMBERSHIP—]TIME REMAINING ACCORDING TO THE CONTRACT."

(ii) A [Health Spas]health spa that [are]is not required to comply with the surety requirement shall [contain]include a provision in consumer contracts that states as follows: "IF THIS HEALTH SPA CEASES OPERATION AND FAILS TO OFFER AN ALTERNATE LOCATION WITHIN FIVE (5) MILES, NO FURTHER PAYMENTS UNDER THIS CONTRACT SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT."

(c) All [membership]consumer contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the [membership]contract are subject to deletion or change at the discretion of the facility.

(d) Each [membership]consumer contract shall include one of the following provisions regarding the consumer's right of rescission under Section 13-23-3(6). The provision shall be bolded and printed in capital letters with at least 12 point font and shall be located on the first page of the contract and just above the signature line.

(i) [Membership]Consumer contracts sold in advance sales shall contain a provision that states as follows: "YOU, THE

CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE HEALTH SPA BECOMES FULLY OPERATIONAL AND AVAILABLE FOR USE. IF THE HEALTH SPA DOES NOT BECOME FULLY OPERATIONAL AND AVAILABLE FOR USE WITHIN 60 DAYS AFTER THE DATE OF THE CONTRACT, YOU MAY CANCEL THIS CONTRACT AT ANY TIME."

(ii) All other [membership]consumer contracts shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONTRACT IS EXECUTED."

(e) All [membership]consumer contracts shall itemize the costs to the consumer and shall include a statement as to the total cost of the contract. These costs shall be clearly stated on the first page of the contract.

(f) Every [membership]consumer contract shall clearly state the beginning and expiration dates of its term. In any event, no [membership]consumer contract shall provide for a [membership] term of longer than thirty-six (36) months.

(2) The [membership]consumer contract or any attachment to it shall clearly state any rules of the [Health-Spa]health spa that apply to:

(a) the consumer's use of its facilities and services; and

(b) cancellation and refund policies of the [Health-Spa]health spa, which shall include:

(i) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after the three-business-day cooling-off period under Section 13-23-3(6).

(ii) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after a consumer has received a portion of the contracted health spa services.

(3) Each [membership]consumer contract shall specify which equipment or facility of the [Health-Spa]health spa is omitted from the contract's coverage.

#### **R152-23-6. Rescission.**

(1) Except where advanced sales are involved, no fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).

(2) When the [membership]consumer contract is the result of the [Health-Spa's]health spa's advance sales and the consumer exercises the consumer's right to rescind, then a fee may be charged against the payments made by the consumer to the extent allowed by Section 13-23-4.

#### **R152-23-7. Procedure When Facility Closes.**

(1) In the event a [Health-Spa]health spa shall, for any reason, close, discontinue normal operations for a period of ten (10) business days, or otherwise cease to do business at any of its facilities while having outstanding obligations to provide health spa services to [members]consumers holding valid [membership]consumer contracts, the [Health-Spa]health spa shall, after obtaining the Division's approval, immediately refund the unused portion of all [membership] fees, including the proration of any fees paid up front. The proration of fees paid up front is required only on initial contracts unless similar fees were charged when the contracts were renewed.

(2) Within ten (10) business days of the closure of its facility, the [Health-Spa]health spa shall provide the Division with a copy of each [membership]consumer contract that was valid on the date of closure.

(3) The Division shall determine the amount of refunds that shall be made and to whom. Such refunds shall be made under the supervision and with the prior approval of the Division. If sufficient funds are not available to make a full refund, then the refund shall be made from the surety proceeds on a prorata basis based upon the full amount that is determined to be due to all [members]consumers. The refund amount due shall be determined by multiplying the number of days remaining on the [member's]consumer's contract term as of the date of closure by the daily cost of [such membership]the health spa services contract to the [member]consumer at the time of purchase. The [Health-Spa]health spa shall remain responsible for the balance.

(4) For purposes of Sections 13-23-5(6) and (7), the distance of five (5) miles shall be calculated by the distance traveled by an automobile over a public road.

(5) The notice required in Section 13-23-5(7) shall be in writing and shall include the following:

(a) The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;

(b) Information concerning [the members of]consumers holding contracts with the health spa, including:

(i) the total number of [members]active consumer contracts;

(ii) the name, address, email address, and telephone number of each [member]consumer;

(iii) the total cost of each [membership]consumer contract; and

(iv) the effective beginning and ending dates of each [membership]consumer contract;

(c) Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23-5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the Division that it has ceased all activities regulated by Title 13, Chapter 23 of the Utah Code;

(d) A description of what action the health spa plans to take with regard to its [members]consumers holding contracts for health spa services, including:

(i) the amount of each [member's]consumer's refund;

(ii) any reason refunds are not to be made;

(iii) an explanation of how refunds are to be calculated; and

(iv) copies of the refund checks that the health spa has issued~~[-and]~~.

(e) Any complaints that the health spa has received from [the members]consumers and how the complaints were resolved.

(6) Within thirty (30) days prior to closing, the health spa shall notify consumers of the closure in writing and set forth what actions the health spa plans to take in regards to transfers, cancellations or refunds.

(7) Once the health spa has notified the Division of its intent to cease operations, it may not offer, sell or attempt to sell, solicit the sale of, or become a party to any new contracts to provide health spa services within forty-five (45) days preceding the anticipated date of closure.

(8) In the event a health spa transfers its contracts to an alternative facility located within five (5) miles of the facility of origin, neither the health spa facility transferring consumer contracts nor the health spa facility receiving consumer contracts may charge any

additional fees to contract holders in order to gain access to or otherwise utilize services originally contracted for.

(a) Contract transfers shall be serviced at health spa facilities that are comparable to the facility of origin. In instances where consumers have paid for services that are not offered or are otherwise not comparable, the health spa shall obtain written authorization from consumers to transfer to the noncomparable facility or make an offer to rescind the contract.

**R152-23-8. Bond, Irrevocable Letter of Credit, or Certificate of Deposit.**

(1) The surety required by Section 13-23-5(2) shall be provided to the Division not less than thirty (30) days in advance of any advanced sales by any [~~Health Spa~~]health spa. Annual renewals of such Bonds, Irrevocable Letters of Credit, or Certificates of Deposit shall be filed with the Division not less than thirty (30) days in advance of expiration of existing Bonds, Irrevocable Letters of Credit, or Certificates of Deposit.

(2) The Division shall have the right to approve or reject Bonds, Irrevocable Letters of Credit, or Certificates of Deposit submitted to the Division. In the event a Bond, Irrevocable Letter of Credit, or Certificate of Deposit is rejected by the Division, the [~~Health Spa~~]health spa shall submit another surety within fifteen (15) days following notice by the Division. In no event shall a [~~Health Spa~~]health spa operate without having a Bond, Irrevocable Letter of Credit, or Certificate of Deposit in effect or establishing an exemption pursuant to Section 13-23-6.

(3) In addition to [~~the members'~~]consumer refunds, the Division shall be entitled to recover from the surety proceeds all of its costs and fines as allowed by Sections 13-23-5(2)(c) and (e).

**KEY: consumer protection, health spas**

**Date of Enactment or Last Substantive Amendment:** [~~August 9, 2010~~]**2012**

**Notice of Continuation:** March 22, 2012

**Authorizing, and Implemented or Interpreted Law:** 63G-3-201; 13-2-5; 13-23-1

Commerce, Consumer Protection  
**R152-34**  
Postsecondary Proprietary School Act  
Rules

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36905

FILED: 10/01/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Postsecondary Proprietary School Act was amended the prior legislative session (S.B. 210), thus requiring amendments to the administrative rules.

SUMMARY OF THE RULE OR CHANGE: The licensing requirements and standards for establishing an exemption from the licensing requirements were amended and clarified.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget will be impacted by the adjustments to the manner in which registration fees are calculated. The nature of the impact cannot be fully known until the fee calculation amendments are in force and applied by postsecondary schools in future registrations.

◆ **LOCAL GOVERNMENTS:** Local government will not be affected by the changes in licensing and exemption requirement amendments.

◆ **SMALL BUSINESSES:** Small businesses that operate postsecondary proprietary schools will be required to meet the new licensing requirements for registration or the standards for establishing an exemption from the licensing requirements. The intent and design of these amendments should clarify the process for these businesses and allow them to register or establish an exemption in a simpler, more streamlined process. The fee calculations may raise or lower the registration fees for these businesses, depending on the amount of tuition they collect.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The interests of students and other consumers will be better protected by the requirements and prohibitions set forth in the amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The fee calculations may raise or lower the registration fees for postsecondary proprietary schools, depending on the amount of tuition they collect. The clarifications to the registration process and standards for establishing an exemption from registration should simplify the registration process for postsecondary proprietary schools.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, the proposed amendments clarify the process by which a school may establish that it is exempt from the licensing requirement. These amendments derive from statutory changes made in the 2012 General Session, S.B. 210. It is not anticipated that this filing will have any fiscal impact to businesses beyond that considered by the Legislature in passing the bill.

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

COMMERCE

CONSUMER PROTECTION

HEBER M WELLS BLDG

160 E 300 S

SALT LAKE CITY, UT 84111-2316

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Traci Gundersen, Director

**R152. Commerce, Consumer Protection.****R152-34. Postsecondary Proprietary School Act Rules.****R152-34-1. Purpose.**

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

**R152-34-2. References.**

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

**R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.**

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study~~[-]~~, including online and distance education programs.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the ~~[division]~~ Division that specifies a stated period for an institution to correct stipulated deficiencies~~[-]~~, but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the ~~[division]~~ Division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, ~~[for whatever reason]~~ in accordance with Section 13-34-113.

(9) "Suspension" means a negative action of the ~~[division]~~ Division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

**R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.**

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) ~~[Its program]~~ Programs must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on:

~~[(+)]~~ (i) transfer of credit from other accredited and recognized institutions,

~~[(2)]~~ (ii) recognized proficiency exams (CLEP, AP, etc.), and/or

~~[(3)]~~ (iii) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection (B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by ~~Utah law~~ Title 53A Chapter 11, Utah Code Annotated; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

- (a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;
- (b) The date of issue;
- (c) The names, titles, and qualifications of administrators and faculty;
- (d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;
- (e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);
- (f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;
- (g) The policies regarding attendance and absence, and any provision for make-up of assignments;
- (h) The policies regarding dismissal and/or interruption of training and of reentry;
- (i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;
- (j) The policies explaining any credit granted for previous education and experience;
- (k) The policies explaining the grading system, including standards of progress required;
- (l) The policies explaining the provision to students of interim grade or performance reports;
- (m) The graduation requirements and the credential awarded upon satisfactory completion of a program;
- (n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans[-];

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; ~~and~~

(u) ~~[Such other information as the division may reasonably require from time to time.]~~ A statement of the institution's surety or surety exemption status with the Division; and

(v) Such other information as the Division may reasonably require.

#### **R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.**

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(1)(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset. The institution shall submit a sworn statement in a form specified by the Division attesting to the religious nature of the education offered.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the ~~division~~ Division upon request.

(4) To ~~[be exempt]~~ qualify for exemption under Section 13-34-105(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) To qualify for exemption under Section 13-34-105(1)

(c):  
(a) the profession for which the review program is offered must be recognized by a state or national licensing or certifying body;

(b) the students enrolled in the review program must previously complete education and/or training in the occupation or field required to be obtained by the certifying body; and

~~(c) the professional review program must provide only review and preparation for exams or other certifying tests that are required to be passed by the certifying body.~~

~~(6) The [division]Division shall determine an institution's status in accordance with the categories contained in this section.~~

~~(6)Z) An exempt institution shall notify the [division]Division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.~~

~~(7)8) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.~~

~~(8) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.~~

**R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.**

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students[-];

(c) The name of the agent authorized to respond to student[s] inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus;[  
and]

(j) A statement that it maintains adequate insurance continuously in force to protect its assets[-];

(k) A disclosure as required by R152-34-7(1)[-];

(1) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

~~(d) [A financial statement, as described in R152-34-7(8) and Section 13-34-107(6).]Financial information, as described in Section 13-34-107(6).~~

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the [division]Division.

~~(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.~~

**R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.**

~~(1) [An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.]In accordance with U.C.A. Section 13-34-107(5), applicants shall pay registration fees established by the Division pursuant to U.C.A. Section 63J-1-504.~~

~~(2) [The Division shall refuse to register an institution when the Division:~~

~~(a) determines that the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;~~

~~(b) determines the violation(s) to be relevant to the appropriate operation of the school; and~~

~~(c) has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience ]The institution shall submit to the Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.~~

(3) ~~[A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of its assets within a three-year period. When this occurs the following information is submitted to the Division for its review:~~

~~\_\_\_\_\_ (a) a copy of any new articles of incorporation;~~

~~\_\_\_\_\_ (b) a current financial statement, as outlined in subsection (8) below;~~

~~\_\_\_\_\_ (c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;~~

~~\_\_\_\_\_ (d) a detailed description of any material modifications to be made in the operation of the institution; and~~

~~\_\_\_\_\_ (e) payment of the appropriate fee.~~

~~\_\_\_\_\_ (i) The Division collects the following fees in accordance with U.C.A. Section 13-34-107(5):~~

~~\_\_\_\_\_ (A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the Division.~~

~~\_\_\_\_\_ (B) The Division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the Division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.~~

~~\_\_\_\_\_ (C) All registration fees collected by the Division will be used to enhance the administration of the Act and Rules In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month during which the registration remains lapsed.~~

~~(4) [The institution shall submit to the Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration] One year after issuance, an institution shall submit a review on a form provided by the Division and pay a fee as determined in Subsection (4) above. The review will evaluate an institution's financial information, surety requirements and the following statistical information:~~

~~\_\_\_\_\_ (a) The number of students enrolled for the previous one-year period of registration;~~

~~\_\_\_\_\_ (b) The number of students who completed and received a credential;~~

~~\_\_\_\_\_ (c) The number of students who terminated their registration or withdrew from the institution;~~

~~\_\_\_\_\_ (d) The number of administrators, faculty, supporting staff, and agents; and~~

~~\_\_\_\_\_ (e) The new catalog, information bulletin, or supplements.~~

~~(5) [In addition to the annual registration fee, an institution failing to file a renewal registration application by the~~

~~due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed] An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.~~

~~(6) [Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the Division shall do one of the following] The Division shall refuse to register an institution if the Division determines the following:~~

~~\_\_\_\_\_ (a) [issue a certificate of registration] the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;~~

~~\_\_\_\_\_ (b) [request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-10(1); or] the violation(s) are relevant to the appropriate operation of the school; and~~

~~\_\_\_\_\_ (c) [refuse to accept the registration statement based on Sections 13-34-107 and 113] there is reasonable doubt that the institution will provide students with an appropriate learning experience or that the institution will function in accordance with all applicable laws and rules.~~

~~(7) [Although a certificate of registration is valid for two (2) years, the Division may periodically request updates of financial statements, surety requirements and the following statistical information] Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the Division shall do one of the following:~~

~~\_\_\_\_\_ (a) [The number of students enrolled from September 1 through August 31] issue a certificate of registration;~~

~~\_\_\_\_\_ (b) [The number of students who completed and received a credential;~~

~~\_\_\_\_\_ (c) The number of students who terminated or withdrew;] refuse to accept the registration statement based on Sections 13-34-107 and 113.~~

~~[\_\_\_\_\_ (d) The number of administrators, faculty, supporting staff, and agents; and~~

~~\_\_\_\_\_ (e) The new catalog, information bulletin, or supplements.~~

~~] (8) [The institution shall have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements] A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than fifty percent (50%) of its assets within a three-year period. When this occurs, the following information shall be submitted to the Division:~~

~~\_\_\_\_\_ (a) [A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet, an income statement, a statement of stockholders' equity, and a statement of cash flows for the most recent fiscal year with all applicable footnotes; and either:~~

~~(i) A certified fiscal audit of the institution's financial statement performed by a certified or licensed public accountant; or~~

~~(ii) A review of the institution's financial statement performed by a certified or licensed public accountant. ]a copy of any new articles of incorporation;~~

~~(b) [If the institution has been determined to be bond exempt under Subsection (14) and has total gross tuition income that does not exceed \$50,000, the institution may, in lieu of the financial statements set forth in Subsection (8)(a), provide to the Division;~~

~~(i) a copy of the institution's most recently filed federal tax return; or~~

~~(ii) if the institution is not required to file a return, then a copy of the owner's most recently filed federal tax return. ]a current financial statement;~~

~~(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;~~

~~(d) a detailed description of any material modifications to be made in the operation of the institution; and~~

~~(e) payment of the appropriate fee.~~

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit shall be provided by the institution before a certificate of registration will be issued by the Division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit shall be in a form approved by the Division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit shall be payable to the Division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the Division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the Division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operations shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of Section R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the Division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage

resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the Division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the Division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five-hundred dollars (\$187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars (\$125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five-hundred dollars (\$62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the Division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars (\$25,000) may provide a surety of twelve thousand, five hundred dollars (\$12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000), with a minimum surety amount of twelve thousand, five hundred dollars (\$12,500) and a maximum surety amount of three hundred thousand dollars (\$300,000).

(b) The surety shall be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The Division may require that such statement be verified by an independent certified public accountant if the Division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The Division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been

satisfied. It does not mean that the Division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

**R152-34-7a. Rules Relating to Accredited Institutions Under Section 13-34-107.5.**

(1) To apply for an exemption certificate, an accredited institution shall submit a completed registration statement application as outlined in Section 13-34-107.5(3) and a copy of such portions of its current accreditation, financial statements and self-evaluation report as specified by the Division.

(2) In accordance with U.C.A. Section 13-34-107.5(7)(a), institutions applying for an exemption certificate shall pay fees established by the Division pursuant to U.C.A. Section 63J-1-504.

(3) An exemption certificate is valid for a two (2) year period; the Division will conduct a review of the registration in alternating years. The Division will request and review updates on the institutions accreditation status.

**R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.**

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice. Tuition paid to an institution, and related student loans, are consumer transactions as defined in Utah Code Title 13, Chapter 11.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration

fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s), at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed \$200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

(i) the student directly; or

(ii) a lender or any other entity on behalf of the student.

(g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

(i) under any provision of:

(A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) Institutions shall disclose that they are primarily operated for educational purposes if this is not apparent from the legal name. ~~[The institution]~~ Institutions shall not advertise educational services in conjunction with any other business or establishment, nor ~~advertise~~ in "help wanted" ~~[n]~~ or ~~[in]~~ "employment opportunity" columns of newspapers, magazines or similar ~~[publications]~~ forums in such a way as to lead readers to

believe that they are applying for employment rather than education and training. ~~[It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name]~~Any advertisement in "help wanted" or "employment opportunity" forums shall be for positions open for immediate employment only;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The ~~[division]~~Division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

~~(i)h~~ An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

~~(A)i~~ REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

~~(B)ii~~ Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

~~(C)iii~~ The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

#### **R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.**

~~[(1) Institutional closure procedures consist of the following:~~

~~(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and~~

~~(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.~~

~~(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:~~

~~(a) appropriate entrance and admission acceptance information;~~

~~(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;~~

~~(c) graduation or termination dates of students;~~

~~(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.~~

~~(3) The division shall not release a surety required under R152-34-7(11) and/or R152-34-7(12) until one year after the date that the institution has complied with the requirements of (1) and (2) above, or until such time as the institution provides documentation acceptable to the division to show that the institution has complied with (1) and (2) above and has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.~~

~~](1) Should an institution cease operations or otherwise discontinue its educational activities, it shall immediately notify the Division in writing 30 days prior to closing. The chief administrative officer shall send formal written notice to the Division; this notice shall include:~~

~~(a) The date on which the institution will officially close;~~

~~(b) A written plan for access to and preservation of permanent records;~~

~~(c) What actions the institution plans to take in regards to its students; and~~

~~(d) In the event an institution closes with students enrolled who have not completed their programs, a list of such students, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the Division, with all particulars.~~

~~(2) Once an institution has notified the Division of its intent to cease operations, it shall not advertise, recruit, offer or otherwise enroll new students into its programs.~~

(3) School records consist of the following permanent scholastic records for all students who are admitted, withdrawn or terminated:

(a) entrance application and admission acceptance information;

(b) attendance and performance information, including transcripts which shall at a minimum include the program in which the student enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates; and

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(4) An institution that closes or otherwise discontinues operations shall maintain its surety required under R152-34-7(11) and/or R152-34-7(12) until:

(a) At least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(b) The institution has satisfied the closure requirements of this section by providing documentation acceptable to the Division to show that it has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

(5) Within ten (10) business days after the closure, the institution shall provide the Division with all the information outlined above and in accordance with Section 13-34-109, including copies of student transcripts.

**R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.**

(1) The ~~[division]~~Division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The ~~[division]~~Division may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the ~~[division]~~Division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

~~([g]i) [noncompliance of]failure to comply with the Postsecondary Proprietary Schools Act or these rules;~~

~~([h]i) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;~~

~~([i]k) failure to comply with applicable laws in this state or another state where the institution is doing business; and~~

~~([j]l) failure to provide reasonable information to the ~~[division]~~Division as requested from time to time.~~

(3) A violation of these administrative rules is also a violation of the Utah Consumer Sales Practices Act and accompanying administrative rules.

**R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.**

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

**KEY: consumer protection, education, postsecondary proprietary schools, registration**

**Date of Enactment or Last Substantive Amendment: ~~[August 9, 2010]~~2012**

**Notice of Continuation: June 14, 2012**

**Authorizing, and Implemented or Interpreted Law: 13-2-5(1)**

Commerce, Occupational and  
Professional Licensing  
**R156-1-506**  
Supervision of Cosmetic Medical  
Procedures

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36858

FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division is proposing this rule filing to implement the provisions of S.B. 40 which was passed during the 2012 General Session.

**SUMMARY OF THE RULE OR CHANGE:** Section R156-1-506 is being added to further define, as specified in S.B. 40, the 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures. In particular, the proposed amendments define the cardio-pulmonary resuscitation (CPR) certification requirement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsection 58-1-106(1) (a) and Subsection 58-1-501(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to the state budget beyond those already identified in the fiscal analysis of S.B. 40.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to those professions and individuals who may perform nonablative cosmetic medical procedures. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to small businesses beyond those already identified in the fiscal analysis of S.B. 40.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to other persons beyond those already identified in the fiscal analysis of S.B. 40.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments are only a clarification of the statutory requirement and therefore the Division has determined the proposed amendments should not have a fiscal impact to affected persons beyond those already identified in the fiscal analysis of S.B. 40.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing further defines the education requirement for nonablative cosmetic medical procedures as required by statute. No fiscal impact to businesses is anticipated.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-1. General Rule of the Division of Occupational and Professional Licensing.**

**R156-1-506. Supervision of Cosmetic Medical Procedures.**

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

(1) the appropriate standards of care for performing nonablative cosmetic medical procedures;

(2) physiology of the skin;

(3) skin typing and analysis;

(4) skin conditions, disorders, and diseases;

(5) pre and post procedure care;

(6) infection control;

(7) laser and light physics training;

(8) laser technologies and applications;

(9) safety and maintenance of lasers;

(10) cosmetic medical procedures an individual is permitted to perform under this title;

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

**KEY: diversion programs, licensing, occupational licensing, supervision**

**Date of Enactment or Last Substantive Amendment: [September 24,]2012**

**Notice of Continuation: January 5, 2012**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1) (a); 58-1-308; 58-1-501(4)**

Commerce, Occupational and  
Professional Licensing  
**R156-17b**  
Pharmacy Practice Act Rule

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 36901

FILED: 10/01/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2012 General Session, H.B. 109 was passed allowing the Division to grant licenses, under specified terms, to conduct research using Schedule I

controlled substances. The proposed amendments to this rule implement H.B. 109. Other rule amendments are made at the request of the Board of Pharmacy to clarify issues related to definitions, supervision, emergency room dispensing of a short course of necessary medications, and the administration of vaccines by properly trained pharmacists.

**SUMMARY OF THE RULE OR CHANGE:** The following rule amendments are made throughout Rule R156-17b: minor grammatical changes, updating of references, and renumbering of subsections. Subsections R156-17b-102(5), (6), (13), (17), and (26) are added to define the terms: "centralized prescription filling;" "centralized prescription processing;" "medical device;" "durable medical equipment," as used in proposed amendments to Subsection R156-17b-617(e); and "medical supplies," reflecting current operational definitions. Subsection R156-17b-617(41) clarifies that a supervisor is a pharmacist in good standing with the Division. Subsection R156-17b-617(46) is updated to reflect the current edition of the United States Pharmacopeia-National Formulary (USP-NF) books. Subsection R156-17b-105(4) is added to require the pharmacist-in-charge (PIC) and responsible party to establish an email address for use in self-audits and Division pharmacy alerts dissemination. Subsection R156-17b-302(5) updates and alphabetizes Class E Pharmacy designations, adding animal euthanasia and human clinical investigational drug research facility, reflective of H.B. 109 allowing the conduct of research with Schedule 1 controlled substances. "Animal euthanasia agency" is defined in Subsection 58-17b-102(4) and the recommended amendment will enable the Division to issue the appropriate license. Subsection R156-17b-303a(3) clarifies pharmacy technician training program content and practical training hours requirements. Subsections R156-17b-303a(3)(d), (3)(e)(i), and (3)(e)(ii) clarify pharmacy technician training and licensing time frames to eliminate confusion and ensure practice competency. Subsection R156-17b-303a(4)(d) provides the correct name of the examination currently in use. Section R156-17b-303b is renumbered for easier reference. Subsection R156-17b-303c(2) provides a remedy for pharmacy interns who fail either the North American Pharmacy Licensing Examination (NAPLEX) or Multistate Jurisprudence Examination (MPJE) twice. Subsection R156-17b-303c(4)(a) clarifies the format and reflects current scoring for the Utah Pharmacy Technician Law and Rule Examination. Section R156-17b-303d is renumbered for easier reference. Subsection R156-17b-304(2)(b) corrects the name of one of the required examinations. Subsection R156-17b-304(3) clarifies the action to be taken when a temporary license expires due to an applicant's failure to pass either the NAPLEX or MPJE twice as noted in Subsection R156-17b-304(2)(b). Section R156-17b-305 is renumbered for easier reference. Section R156-17b-307 is added. Subsection R156-17b-307(1) requires documentation of the owners and management of the pharmacy and the facility in which the pharmacy is located. Subsection R156-17b-307(2) identifies the key personnel involved in the operation of the applicant pharmacy for which background checks are

required. In Section R156-17b-402, many of the administrative penalties were added or renumbered to properly organize and reflect by description and citation all added or renumbered rules and statutes identified in Subsection 58-17b-504(5) and in Subsection R156-37-502(50) is added to reflect an administrative penalty for failing to update the Division of an email address change that would be used for self-audits and pharmacy alerts as required in Section R156-17b-105 and defined as unprofessional conduct in Subsection R156-17b-502(20). Subsection R156-17b-502(12) updates the referenced rule to the correct rule. Subsection R156-17b-502(22) defines an additional form of unprofessional conduct, failing to update the division of an email address change. Subsection R156-17b-601(1)(k) clarifies prescription drug orders that a pharmacy technician may accept, removing the ambiguity of the phrase "telephonically or electronically submitted". Subsection R156-17b-601(3) clarifies supervisory requirements for pharmacy technicians and pharmacy technicians-in-training. Subsection R156-17b-603(1) clarifies the responsibilities of the PIC. Subsection R156-17b-603(2) adds the requirement of a secure email address for self-audits and Division pharmacy alerts, and creates a time frame wherein establishment of an email address needs to be accomplished. Subsection R156-17b-603(3) specifically delineates the duties of the PIC. Subsection R156-17b-603(3)(u) adds Division notification of any change in the email address used for self-audits and pharmacy alerts as a duty of the pharmacist-in-charge. Subsection R156-17b-612(13) clarifies that an actual physical address is needed for a valid prescription, not a post office box. Subsection R156-17b-612(14) reflects statutory changes allowing the conduct of research with Schedule I controlled substances, pursuant to H.B. 109, Use of Controlled Substances in Research. In Section R156-17B-613, the referenced statutes in the introductory paragraph to issuing prescriptions by electronic means are updated to reflect the correct references. In Subsection R156-17b-614a(1)(c), the term "durable medical equipment" (DME) is added to reflect the real possibility that Class A and B pharmacies may provide DME with Class A and B pharmacy licenses. There has been confusion in the industry, with many Class A and B pharmacies thinking they needed an additional Class E pharmacy license to dispense DME. Subsection R156-17b-614(4)(g) updates the references that must be available to facility personnel to include the Controlled Substance Database Act and Controlled Substance Database Act Rule. Subsection R156-17b-614(16) clarifies pharmacy structural security requirements to prevent unauthorized entry into the pharmacy. Also updated the Trissel's Handbook on Injectable Drugs to the 16th edition, dated 10/27/2010. Section R156-17b-614e is added to update, streamline, and formalize a 1999 document, "Guidelines for Hospital Pharmacies" utilized by rural hospitals dispensing a short course of necessary medications to patients when a pharmacy was not open to fill their prescriptions. The course of medication is changed from a three-day course to a seven-day course at the request of the Utah Coalition Against Sexual Assault and emergency department providers so that critical treatment for sexually

transmitted infections could be started immediately and not interrupted over a long holiday weekend if pharmacies were not open and/or the medication was not immediately available for dispensing. A patient receiving prescription medication during the critical treatment window is the most significant issue addressed in this section. Subsection R156-17b-615(8) is deleted because the issue of background checks for key personnel is addressed in Section R156-17b-307. Subsection R156-17b-615(21) is added to clarify that a Class C pharmacy and any other classification of pharmacy may not be located at the same address. This is included, in part, in an attempt to prohibit the purchasing of critical, short-supply, in-demand emergency medications by one pharmacy and that same pharmacy selling those medications at a greatly increased cost to an affiliated pharmacy for further distribution, e.g., the gray market or parallel market. Emergency Departments and EMS in the state of Utah are now resorting to using emergency medications beyond the expiration date because they simply cannot purchase new medications due to lack of availability, a nationwide problem. The gray market fuels this shortage of critical medications. This section also has significant renumbering of subsections. Section R156-17b-617 is changed to Section R156-17b-617a because the category of Class E pharmacy was broadened to include specific types of Class E pharmacies and their operating standards, all under Section R156-17b-617. Section R156-17b-617a became the introductory paragraph requiring a written pharmacy care protocol for all Class E pharmacies. Section R156-17b-617b is added to define basic operating standards for the analytical laboratory, a Class E pharmacy. Section R156-17b-617c is added to define basic operating standards for an animal euthanasia facility, a Class E pharmacy. Section R156-17b-617d is added to define basic operating standards for a durable medical equipment facility. This designation is helpful for pharmacies engaged in the competitive bidding process for Medicare contracts. Subsection R156-17b-617d(2) clarifies that a licensed practitioner is exempt from licensure as a Class E pharmacy when administering DME to a patient or animal. Section R156-17b-617e is added to define basic operating standards for a human clinical investigational drug research facility and pursuant to H.B. 109. This designation was requested by the industry to facilitate research activities and acquisition of a Drug Enforcement Administration (DEA) license for Schedule I controlled substances. Section R156-17b-617f is added to define basic operating standards for the medical gas facility, a Class E pharmacy. Subsection R156-17b-618(1)(a) adds a change in "name" to the list of changes requiring a pharmacy to make application for a new license and receive approval from the Division prior to the proposed change. This requirement will prevent the licensing of multiple pharmacies with the same name and allow the Division to monitor pharmacies undergoing frequent name changes in short periods of time. Subsection R156-17b-618(1)(b) includes a change in "name" to the list of changes that must be approved prior to issuance of a new license and surrender of the old license. In Subsection R156-17b-618(2)(a), dealing with a name change without application for a new license, is

deleted. Subsection R156-17b-621(4) adds the "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications" as the guideline or standard for pharmacist administration of vaccines and emergency medications.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-17b-101 and Section 58-37-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates United States Pharmacopeia (USP) 35-National Formulary (NF) 30 through Supplement 2, published by U.S. Pharmacopeia, 2012
- ◆ Adds Model Policy for the Use of Controlled Substances for the Treatment of Pain, published by Federation of State Medical Boards of the United States, Inc., May 2004
- ◆ Adds 21 CFR Part 312, published by United States Government, April 1, 2012

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division may reduce mailing expenditures by emailing pharmacy alerts and notifications instead of mailing alerts and notifications to licensed pharmacies. However, an exact amount of potential savings to the Division's budget cannot be determined. The Division is also required to purchase two copies of the current edition of the USP-NF books at an annual renewal cost of approximately \$1,800.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed pharmacists, pharmacies, pharmacy technicians and pharmacy interns and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed pharmacists, pharmacies, pharmacy technicians, and pharmacy interns and applicants for licensure in those classifications. Pharmacies meeting the requirements of the new classifications of Class E pharmacies will be required to apply for licensure with the Division as required, in part, by H.B. 109. However, many of those pharmacies that will have to apply are either currently licensed as or are applying for a different classification of pharmacy. The proposed amendments may enable small businesses to attract research opportunities to utilize Schedule I controlled substances in research. The proposed amendments require a new application for a pharmacy name change, which is a cost of \$100 - \$200, depending on the need of the pharmacy. However, most pharmacies seldom change their names. The proposed amendments may increase revenues for pharmacies that utilize pharmacists for the administration of vaccines. These amounts cannot be reasonably estimated by the Division. Licensed pharmacies

who may qualify as a small business will also need to maintain the current edition of the USP-NF books at an annual renewal cost of approximately \$900.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed pharmacists, pharmacies, pharmacy technicians, and pharmacy interns and applicants for licensure in those classifications. Pharmacies meeting the requirements of the new classifications of Class E pharmacies will be required to apply for licensure with the Division as required, in part, by H.B. 109. However, many of those pharmacies that will have to apply are either currently licensed as or are applying for a different classification of pharmacy. The proposed amendments may enable businesses to attract research opportunities to utilize Schedule I controlled substances in research. The proposed amendments require a new application for a pharmacy name change, which is a cost of \$100 - \$200, depending on the need of the pharmacy. However, most pharmacies seldom change their names. The proposed amendments may increase revenues for pharmacies that utilize pharmacists for the administration of vaccines. These amounts cannot be reasonably estimated by the Division. Licensed pharmacies will also need to maintain the current edition of the USP-NF books at an annual renewal cost of approximately \$900.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed pharmacists, pharmacies, pharmacy technicians, and pharmacy interns and applicants for licensure in those classifications. Pharmacies meeting the requirements of the new classifications of Class E pharmacies will be required to apply for licensure with the Division as required, in part, by H.B. 109. However, many of those pharmacies that will have to apply are either currently licensed as or are applying for a different classification of pharmacy. The proposed amendments may enable businesses to attract research opportunities to utilize Schedule I controlled substances in research. The proposed amendments require a new application for a pharmacy name change, which is a cost of \$100 - \$200, depending on the need of the pharmacy. However, most pharmacies seldom change their names. The proposed amendments may increase revenues for pharmacies that utilize pharmacists for the administration of vaccines. These amounts cannot be reasonably estimated by the Division. Licensed pharmacies will also need to maintain the current edition of the USP-NF books at an annual renewal cost of approximately \$900.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This comprehensive rule filing implements H.B. 109 passed in the 2012 General Session regarding DOPL granting licenses for research on Schedule I controlled substances, clarifies definitions, removes duplicative language, and updates references. It also clarifies existing standards and adopts new ones, such as establishing operating standards for different types of pharmacies, standards for dispensing short

courses of necessary medications, administering vaccines, etc. No fiscal impact is expected from new provisions relating to research on Schedule I controlled substances, which impact was addressed in the passage of H.B. 109. Likewise, no impact is expected from the technical corrections. However, there may be a slight cost to licensees and applicants based on the new standards the Division has adopted. That cost is not clear, nor is it clear how businesses will be financially impacted.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/23/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Mark Steinagel, Director

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

**R156-17b. Pharmacy Practice Act Rule.**

**R156-17b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's

prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(5) "~~Centralized [Order Entry] Prescription Filling~~" means ~~[a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions] the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.~~

(6) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.

([6]7) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

([7]8) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

([8]9) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

([9]10) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

([10]11) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

([11]12) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(13) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

([12]14) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

([13]15) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

([14]16) "Drugs", as used in this rule, means drugs or devices.

(17) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury;

(d) is suitable for use in a health care facility or in the home; and

(e) may include devices and medical supplies.

([15]18) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

([16]19) "FDA" means the United States Food and Drug Administration and any successor agency.

([17]20) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

([18]21) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

([19]22) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

([20]23) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(~~21~~24) "Maintenance medications" means medications the patient takes on an ongoing basis.

(~~22~~25) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(26) "Medical supplies" means items for medical use that are suitable for use in a health care facility or in the home and that are disposable or semi-disposable and are non-reusable.

(~~23~~27) "MPJE" means the Multistate Jurisprudence Examination.

(~~24~~28) "NABP" means the National Association of Boards of Pharmacy.

(~~25~~29) "NAPLEX" means North American Pharmacy Licensing Examination.

(~~26~~30) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(~~27~~31) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(~~28~~32) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(~~29~~33) "PIC", as used in this rule, means the pharmacist-in-charge.

(~~30~~34) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(~~31~~35) "PTCB" means the Pharmacy Technician Certification Board.

(~~32~~36) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(~~33~~37) "Refill" means to fill again.

(~~34~~38) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(~~35~~39) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(~~36~~40) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(41) "Supervisor" means a licensed pharmacist in good standing with the Division.

(~~37~~42) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(~~38~~43) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(~~39~~44) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

(~~40~~45) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(~~41~~46) "USP-NF" means the United States Pharmacopeia-National Formulary (USP ~~34~~35-NF ~~29~~30), ~~2011~~2012 edition, which is official from May 1, ~~2011~~2012 through Supplement ~~1~~2, dated ~~August 1, 2011~~December 1, 2012, which is hereby adopted and incorporated by reference.

(~~42~~47) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(~~43~~48) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

**R156-17b-105. Licensure - Administrative Inspection.**

In accordance with Subsection 58-17b-103(3)(e), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection will be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division that are found to be in compliance with this chapter will be returned to the PIC of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance destruction form will be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

(4) In accordance with Subsection 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.

**R156-17b-30[1]2. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.**

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

- (a) closed door;
- (b) hospital clinic pharmacy;
- (c) methadone clinics;
- (d) nuclear;
- (e) branch;
- (f) hospice facility pharmacy;
- (g) veterinarian pharmaceutical facility;
- (h) pharmaceutical administration facility; and
- (i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

- (a) manufacturing;
- (b) producing;
- (c) wholesaling;
- (d) distributing; and
- (e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a PIC licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a PIC and include:

- (a) ~~[medical gases providers]~~analytical laboratory;
- (b) ~~[analytical laboratories]~~animal euthanasia;
- (c) durable medical equipment provider[s];~~[-and]~~
- (d) ~~[central order entry pharmacies;]~~human clinical investigational drug research facility; and
- (e) medical gas provider.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a PIC shall have one PIC who is employed on a full-time basis as defined by the employer, who acts as a PIC for one pharmacy. However, the PIC may be the PIC of more than one Class A or Class B pharmacy, if the additional Class A or Class B pharmacies are not open to provide pharmacy services simultaneously.

(8) The PIC shall comply with the provisions of Section R156-17b-603.

**R156-17b-[304]303a. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination

Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(6), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

(i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;

(ii) hygiene and aseptic techniques;

(iii) terminology, abbreviations and symbols;

(iv) pharmaceutical calculations;

(v) identification of drugs by trade and generic names, and therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory;

(viii) computer applications in the pharmacy; and

(ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program ~~[must require]~~ shall include:

(i) at least 180 ~~but not more than 360~~ hours of ~~directly supervised practical training as determined appropriate by the supervisor; [supervised by a licensed pharmacist in good standing with the Division]~~ and

(ii) ~~[must include]~~ written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that ~~[includes]~~ address:

(i) ~~A~~ the specific manner in which supervision will be completed; and

(ii) ~~B~~ an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one-~~[ ]~~year time frame ~~[must]~~ shall:

(A) complete a minimum of an additional 180 but not more than 360 hours of directly supervised refresher practice, as determined by the supervisor, in a pharmacy approved by the Board if it has been more than six months since having ~~[exposure to pharmacy practice]~~ practiced in a pharmacy setting and less than two years since the initial start date of the program; or

(B) repeat an approved pharmacy technician training program in entirety if it has been greater than two years since the initial start date of the program.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than six months but less than two years and wishes to renew that license must complete a minimum of 180 ~~but not more than 360~~ hours of directly supervised refresher [hours] practice, as determined appropriate by the supervisor, in a [n approved] pharmacy approved by the Board [under the direct supervision of a pharmacist].

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as at technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; ~~[and]~~

(c) has passed and maintained current PTCB or ExCPT certification; and

~~(d) has passed the Utah [law exam]~~ Pharmacy Technician Law and Rule Examination.

**R156-17b-~~306~~303b. Qualifications for Licensure - [Pharmacist-] Pharmacy Internship Standards.**

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist include the following:

(a) At least 1500 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both.

(i) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

- (A) community pharmacy;
- (B) institutional pharmacy; and
- (C) any clinical setting.

(ii) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(b) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(c) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(d) No credit will be awarded for didactic experience.

(2) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern must notify the Division within 15 days of the suspension or dismissal.

(3) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender the pharmacy intern license to the Division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

**R156-17b-~~302~~303c. Qualifications for Licensure - Examinations.**

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that must be successfully passed by an applicant for licensure as a pharmacist are:

- (a) the NAPLEX with a passing score as established by NABP; and
- (b) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a minimum passing score as established by NABP.

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

~~(2)3~~ In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

~~(2)4~~ In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination, taken as part of the application for licensure, with a minimum passing score of [at least 75 and taken at the time of making application for licensure]88 percent; and

(b) the PTCB or ExCPT with a passing score as established by the certifying body. The certificate must exhibit a valid date and that the certification is active.

~~(2)5~~ A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

**R156-17b-~~307~~303d. Qualifications for Licensure - Meet with the Board.**

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

**R156-17b-~~305~~304. Temporary Licensure.**

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist except for the passing of the required examination, if the applicant:

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure;

(b) submit a complete application for licensure as a pharmacist except the passing of the ~~[NABP]NAPLEX~~ and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

~~(3)4~~ A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

**R156-17b-~~303~~305. Licensure - Pharmacist by Endorsement.**

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any

state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

**R156-17b-307. Qualifications for Licensure - Criminal Background Checks.**

(1) An applicant for licensure as a pharmacy shall document to the satisfaction of the Division the owners and management of the pharmacy and the facility in which the pharmacy is located.

(2) The following individuals associated with an applicant for licensure as a pharmacy shall be subject to the criminal background check requirements set forth in Section 58-17b-307:

- (a) the PIC;
- (b) the PIC's immediate supervisor;
- (c) the senior person in charge of the facility in which the pharmacy is located;
- (d) others associated with management of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare; and
- (e) owners of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare.

**R156-17b-402. Administrative Penalties.**

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply[-]:

(1) [P]reventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$5,000

(2) [F]ailing to deliver the license or permit or certificate to the Division upon demand, in violation 58-17b-501(2):

initial offense: \$100 - \$1,000  
subsequent offense(s): \$500 - \$2,000

(3) [U]sing the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of 58-17b-501(3)(a):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(4) [C]onducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of 58-17b-501(3)(b):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(5) [B]uying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):

initial offense: \$1,000 - \$5,000  
subsequent offense(s): \$10,000

(6) [U]sing to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret, in violation of Subsection 58-17b-501(5):

initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000

(7) [I]llegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(8) [F]illing, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000

(9) [R]equiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,500 - \$10,000

(10) [B]eing in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):

initial offense: \$500 - \$1,000  
subsequent offense(s): \$1,500 - \$5,000

(11) [D]ispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,500 - \$10,000

(12) [S]elling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: \$1,000 - \$5,000  
subsequent offense(s): \$10,000

(13) [U]sing a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: \$100 - \$500  
subsequent offense(s): \$1,000 - \$2,500

(14) [W]illfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,500 - \$10,000

(15) [P]aying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense: \$2,500 - \$5,000  
subsequent offense(s): \$5,500 - \$10,000

(16) ~~[M]~~misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

~~(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,500 - \$10,000~~

~~(17) [A]accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):~~

~~initial offense: \$1,000 - \$5,000~~

~~subsequent offense(s): \$10,000~~

~~(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician, in violation of Subsection 58-17b-502(6):~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,500 - \$10,000~~

~~(18) [V]violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,500 - \$10,000~~

~~(21) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$500 - \$1,000~~

~~(21) [A]administering without appropriate training guidelines, ~~or~~ lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(22) [D]disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$500 - \$1,000~~

~~(23) [E]engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(24) [F]failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$500 - \$1,000~~

~~(25) Compounding a prescription drug for sale to another pharmaceutical facility:~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$500 - \$1,000~~

~~(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$500 - \$1,000~~

~~(26) [P]preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(14):~~

~~initial offense: \$500 - \$1,000~~

~~subsequent offense(s): \$2,500 - \$5,000~~

~~(27) [V]violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):~~

~~initial offense: \$250 - \$500~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(29) [F]fail[ure]ing to [follow]comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):~~

~~initial offense: \$250 - \$500~~

~~subsequent offense(s): \$500 - \$750~~

~~(29) [F]fail[ure]ing to [follow]comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,500 - \$10,000~~

~~(28) [F]failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$500 - \$1,000~~

~~(29) [F]failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):~~

~~initial offense: \$50 - \$100~~

~~subsequent offense(s): \$200 - \$300~~

~~(30) [D]defaulting on a student loan, in violation of Subsection R156-17b-502(5):~~

~~initial offense: \$100 - \$200~~

~~subsequent offense(s): \$200 - \$500~~

~~(31) [F]failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):~~

~~initial offense: \$500 - \$1,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(32) [F]failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):~~

~~initial offense: \$500 - \$2,000~~

~~subsequent offense(s): \$2,000 - \$10,000~~

~~(34) [F]fail[ure]ing to return or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):~~

~~initial offense: \$100 - \$250~~

~~subsequent offense(s): \$300 - \$500~~

~~(140)37~~ ~~[V]~~violat[ions of]ng the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):

initial violation: \$50 - \$100  
 failure to comply within determined time: \$250 - \$500  
 subsequent violations: \$250 - \$500  
 failure to comply within established time: \$750 - \$1,000

~~(33)8~~ ~~[A]~~abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):

initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000

~~(39)~~ failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):

initial offense: \$100 - \$500  
 subsequent offense(s): \$500 - \$1,000

~~(37)40~~ ~~[F]~~fail[ure]ing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):

Pharmacist initial offense: \$100 - \$250  
 Pharmacist subsequent offense(s): \$500 - \$2,500  
 Pharmacy initial offense: \$250 - \$1,000  
 Pharmacy subsequent offense(s): \$500 - \$5,000

~~(38)41~~ allowing any ~~[U]~~unauthorized ~~[people]~~persons in the pharmacy, in violation of Subsection R156-17b-502(13):

Pharmacist initial offense: \$50 - \$100  
 Pharmacist subsequent offense(s): \$250 - \$500  
 Pharmacy initial offense: \$250 - \$500  
 Pharmacy subsequent offense(s): \$1,000 - \$2,000

~~(39)42~~ ~~[F]~~fail[ure]ing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):

Pharmacy personnel initial offense: \$500 - \$2,500  
 Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000

Pharmacy: \$2,000 per occurrence

~~(35)43~~ ~~[F]~~fail[ure]ing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):

Double the original penalty amount up to \$10,000

~~(57)44~~ ~~[F]~~fail[ure]ing to comply with the PIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):

initial offense: \$500 - \$2,000  
 subsequent offense(s) \$2,000 - \$10,000

~~(58)45~~ ~~[F]~~fail[ure]ing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):

initial offense: \$500 - \$2,500  
 subsequent offense: \$5,000 - \$10,000

~~(59)46~~ ~~[D]~~dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):

initial offense: ~~[\$500]100~~ - ~~[\$1,000]500~~  
 subsequent offense: ~~[\$2,500]200~~ - ~~[\$5,000]1,000~~

~~(60)47~~ ~~[F]~~ailing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):

initial offense: \$100 - \$500  
 subsequent offense: \$200 - \$1,000

~~(61)48~~ ~~[F]~~ailing to provide PIC information to the Division within 30 days of a change in PIC, in violation of Subsection R156-17b-502(20):

initial offense: \$100 - \$500  
 subsequent offense: \$200 - \$1,000

~~(62)49~~ ~~[R]~~requiring a pharmacy PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):

initial offense: \$500 - \$2,000  
 subsequent offense: \$2,000 - \$10,000

~~(50)~~ failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):

Pharmacist initial offense: \$100 - \$300  
 Pharmacist subsequent offense(s): \$500 - \$1,000

Pharmacy initial offense: \$250 - \$500

Pharmacy subsequent offense(s): \$500 - \$1,250

~~(41)51~~ ~~[P]~~ practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):

initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000

~~(42)52~~ ~~[F]~~ impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):

initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000

~~(43)53~~ ~~[K]~~ knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):

initial offense: \$500 - \$1,000  
 subsequent offense(s): \$1,000 - \$5,000

~~(44)54~~ ~~[K]~~ knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: \$500 - \$1,000  
 subsequent offense(s): \$1,000 - \$5,000

~~(45)55~~ ~~[O]~~btaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$100 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000

~~(56)~~ issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A) and 58-1-501(2)(m)(i):

initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000

~~(57)~~ issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B) and 58-1-501(2)(m)(ii):

initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000

~~(46)~~58] ~~[V]~~violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

~~(47)~~59] ~~[V]~~violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

~~(48)~~60] ~~[E]~~ngaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

~~(49)~~61] ~~[E]~~ngaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

~~(50)~~62] ~~[E]~~ngaging in conduct, including the use of intoxicants, ~~[or]~~drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician, in violation of Subsection 58-1-501(2)(e):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

~~(51)~~63] ~~[P]~~racticing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

~~(52)~~64] ~~[P]~~racticing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

~~(53)~~65] ~~[P]~~racticing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

~~(54)~~66] ~~[P]~~racticing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

~~(55)~~67] ~~[P]~~racticing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

~~(56)~~68] ~~[V]~~erbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

~~(69)~~ acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

~~(70)~~ violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

~~(71)~~ surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

~~(72)~~ practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

~~(73)~~ practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

~~(74)~~ practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

~~(75)~~ using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

~~(76)~~ failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled SubstanceS for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:

initial offense: \$1,000 - \$5,000

subsequent offense(s) \$5,000 - \$10,000

(78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance which is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action which revokes, suspends, or limits the license, in violation of R156-37-502(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(82) failing to maintain controls over controlled substances which would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(85) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(86) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

([36]87) [A]ny other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

#### **R156-17b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return or providing false information on a self-inspection report;

(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

([8]10) abandoning a pharmacy or leaving prescription drugs accessible to the public;

([9]11) failing to identify licensure classification when communicating by any means;

([10]12) ~~the practice of~~ practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-~~[306(4)(d)]~~606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

([11]13) allowing any unauthorized persons in the pharmacy;

([12]14) failing to offer to counsel any person receiving a prescription medication;

([13]15) failing to pay an administrative fine that has been assessed in the time designated by the Division;

([14]16) failing to comply with the PIC standards as established in Section R156-17b-603;

([15]17) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

([16]18) dispensing medication that has been discontinued by the FDA;

([17]19) failing to keep or report accurate records of training hours;

([18]20) failing to provide PIC information to the Division within 30 days of a change in PIC; ~~and~~

([19]21) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare; and

~~(22) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts.~~

### **R156-17b-601. Operating Standards - Pharmacy Technician.**

In accordance with Subsection 58-17b-102(55), practice as a licensed pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

- (a) receiving written prescriptions;
- (b) taking refill orders;
- (c) entering and retrieving information into and from a database or patient profile;
- (d) preparing labels;
- (e) retrieving medications from inventory;
- (f) counting and pouring into containers;
- (g) placing medications into patient storage containers;
- (h) affixing labels;
- (i) compounding;
- (j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection R156-17b-304(3)(ix);

(k) accepting new prescription drug orders ~~[telephonically or electronically submitted]~~ left on voicemail for a pharmacist to review; and

(l) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new verbal prescriptions or medication orders, clarify prescriptions or medication orders nor perform drug utilization reviews.

(3) Pharmacy technicians, including no more than one pharmacy technician-in-training per shift, shall ~~[be supervised on-site]~~ have direct supervision by a pharmacist in accordance with Subsection R156-17b-603(19).

### **R156-17b-603. Operating Standards - Pharmacist-in-charge.**

~~(1) The PIC shall have the responsibility to oversee the [implementation and adherence to pharmacy policies that address the following:] operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC shall be personally in full and actual charge of the pharmacy.~~

~~(2) In accordance with Subsection 58-17b-103(1) and 58-17b-601(1), a secure email address shall be established by the PIC or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or responsible party shall notify the Division of the pharmacy's secure email address initially as follows:~~

~~(a) at the September 30, 2013 renewal for all licensees; and~~

~~(b) thereafter, on the initial application for licensure.~~

~~(3) The duties of the PIC shall include:~~

~~([1]a) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:~~

~~([a]i) packaging, preparation, compounding and labeling; and~~

~~([b]ii) ensuring that drugs are dispensed safely and accurately as prescribed;~~

~~([2]b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;~~

~~([3]c) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;~~

~~([4]d) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;~~

~~([5]e) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;~~

~~([6]f) education and training of pharmacy technicians;~~

~~([7]g) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;~~

~~([8]h) disposal and distribution of drugs from the pharmacy;~~

~~([9]i) bulk compounding of drugs;~~

~~([10]j) storage of all materials, including drugs, chemicals and biologicals;~~

~~([11]k) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;~~

~~([12]l) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;~~

~~([13]m) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;~~

~~([14]n) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;~~

~~([15]o) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;~~

~~([16]p) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;~~

~~([17]q) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;~~

~~([18]r) assuring that all personnel working in the pharmacy have the appropriate licensure;[and]~~

~~([19]s) assuring that no pharmacy or pharmacist operates the pharmacy or allows operation of the pharmacy with a ratio of pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare; [and]~~

([20]t) assuring that the PIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC within 30 days of the change; and

(u) assuring with regard to the secure email address used for self-audits and pharmacy alerts that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

#### **R156-17b-612. Operating Standards - Prescriptions.**

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern and pharmacy technician.

(4) In accordance with Section 58-17b-609, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist or pharmacy intern at the pharmacy holding the prescription to a pharmacist or pharmacy intern at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist or pharmacy intern and receiving pharmacist or pharmacy intern shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists or pharmacy interns or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist or pharmacy intern transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist or pharmacy intern receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist or pharmacy intern to which such prescription is transferred; and

(E) the name of the pharmacist or pharmacy intern transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders which have been previously transferred; and

(f) a pharmacist or pharmacy intern may not refuse to transfer original prescription information to another pharmacist or pharmacy intern who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner must be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7) (f).

(11) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy which contains the essential information;

(b) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist complies with the requirements of Subsections (11)(c) through (g) of this section.

(13) The address specified in Subsection 58-17b-602(1) (b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

### **R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.**

In accordance with Subsections 58-17b-102~~(3)~~<sup>(28)</sup> and ~~(29)~~ and 58-17b-~~601~~<sup>602</sup>(1), prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order.

The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

### **R156-17b-614a. Operating Standards - Operating Standards, Class A and B Pharmacy.**

(1) In accordance with Subsection 58-17b-601(1), standards for the operations for a Class A and Class B pharmacy include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and ~~[devices]~~  durable medical equipment  in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) must follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;

(d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;

(e) a master worksheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

- (i) the formula;
- (ii) the components;
- (iii) the compounding directions;
- (iv) a sample label;
- (v) evaluation and testing requirements;
- (vi) sterilization methods, if applicable;
- (vii) specific equipment used during preparation such as specific compounding device; and
- (viii) storage requirements;

(f) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) expiration date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(g) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) expiration date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(h) the expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", [~~13th Edition, 2004~~]16th Edition, October 27, 2010;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing expiration dates shall be documented; and

(i) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rules of the Division of Occupational and Professional Licensing;

- (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- (d) R156-17b, Utah Pharmacy Practice Act Rule;
- (e) Title 58, Chapter 37, Utah Controlled Substances Act;
- (f) R156-37, Utah Controlled Substances Act Rule[s];
- (g) Title 58, Chapter 37f, Controlled Substance Database

Act:

(h) R156-37f, Controlled Substance Database Act Rule;  
 ([g]i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

([h]j) current FDA Approved Drug Products (orange book); and

([i]k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility must maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(16) If the pharmacy includes a drop/false ceiling, the pharmacy's perimeter walls must extend to the hard deck, or other

measures must be taken to prevent unauthorized entry into the pharmacy.

**R156-17b-614e. Class B - Hospital Pharmacy and Emergency Department Treatment.**

The "Guidelines for Hospital Pharmacies and Emergency Department Treatment" document, adopted May 21, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard to be utilized by rural hospital emergency departments dispensing a short course of necessary medications to patients when a pharmacy is not open to fill their prescriptions.

**R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.**

In accordance with Subsections 58-17b-102(48) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor must provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publically traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each

manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities must undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer must publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

~~(8) [In accordance with Section 58-17b-307, the Division shall require a criminal background check of the applicant, including but not limited to all key personnel involved in the operation of the pharmaceutical wholesaler or manufacturer, including the most senior person responsible for facility operation, purchasing, and inventory control and the person they report to in order to determine if an applicant or others associated with the ownership, management, or operations of the pharmaceutical wholesaler or manufacturer have committed criminal acts that would constitute grounds for denial of licensure.~~

~~(9) ]All Class C pharmacies shall:~~

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are

outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

~~(10) ]Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:~~

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

~~(11) ]Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:~~

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

~~(12) ]Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:~~

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form;

and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(~~13~~12) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving

pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesaler under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(~~14~~13) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(~~15~~14) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(14), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(~~16~~15) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention

period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(~~17~~16) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(~~18~~17) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(~~19~~18) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(~~20~~19) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(~~21~~20) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

(21) No facility located at the same address shall be dually licensed as both a Class C pharmacy and any other classification of pharmacy. Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.

**R156-17b-617a. Class E Pharmacy Operating Standards - [Class E pharmacy]General Provisions.**

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), ~~[the operating standards for a]~~Class E pharmacy~~y~~ies shall ~~[include]~~have a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs that will be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compounding for sterile preparations.

**R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.**

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

\_\_\_\_\_ (5) possess prescription drugs for the purpose of analysis; and

\_\_\_\_\_ (6) take measures to prevent the theft or loss of controlled substances.

**R156-17b-617c. Class E Pharmacy Operating Standards - Animal Euthanasia.**

\_\_\_\_\_ (1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal euthanasia facility shall:

\_\_\_\_\_ (a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

\_\_\_\_\_ (b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia of animals;

\_\_\_\_\_ (c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

\_\_\_\_\_ (d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia purposes;

\_\_\_\_\_ (e) maintain all legend drugs and controlled substances in an area within a building having perimeter security which limits access during working hours, provides adequate security after working hours, and has the following security controls:

\_\_\_\_\_ (i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

\_\_\_\_\_ (ii) requisite key control, combination limitations, and change procedures;

\_\_\_\_\_ (f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal euthanasia facility pharmacy;

\_\_\_\_\_ (g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

\_\_\_\_\_ (h) develop and maintain written policies and procedures for immediate retrieval which include the following:

\_\_\_\_\_ (i) the type of activity conducted with regards to legend drugs and/or controlled substances;

\_\_\_\_\_ (ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia of animals;

\_\_\_\_\_ (iii) the type, form and quantity of legend drugs and/or controlled substances handled;

\_\_\_\_\_ (iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

\_\_\_\_\_ (v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

\_\_\_\_\_ (vi) adequate supervision of employees having access to manufacturing and storage areas;

\_\_\_\_\_ (vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

\_\_\_\_\_ (viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

\_\_\_\_\_ (ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

\_\_\_\_\_ (2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

**R156-17b-617d. Class E Pharmacy Operating Standards- Durable Medical Equipment.**

\_\_\_\_\_ (1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

\_\_\_\_\_ (a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

\_\_\_\_\_ (b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

\_\_\_\_\_ (c) be equipped to permit the orderly storage of durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

\_\_\_\_\_ (d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

\_\_\_\_\_ (e) maintain prescription forms and records for a period of five years;

\_\_\_\_\_ (f) be locked and enclosed in such a way as to bar entry by the public or any non-personnel when the facility is closed; and

\_\_\_\_\_ (g) post the license of the facility in full view of the public.

\_\_\_\_\_ (2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

**R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.**

\_\_\_\_\_ (1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, which are hereby incorporated by reference.

\_\_\_\_\_ (2) In accordance with Subsections 58-37-6(2)(b) and (3) (a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

**R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.**

In accordance with Section 58-17b-302 and Subsection 58-17b 601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

**R156-17b-618. Change in Ownership or Location.**

(1)[(a)] In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility [that proposes to change its location or ownership] shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed change[-]s:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership.

[(b)2] Upon approval of the change in location, name, or ownership [or location], and the issuance of a new license, the original license[s] shall be surrendered to the Division.

(2)(a) In accordance with Section 58-17b-614, a licensed pharmaceutical facility that proposes to change its names without a change in ownership shall submit the request in writing upon a form provided by the Division, no later than ten business days before the proposed name change. The request for a name change must be approved by the Division prior to implementing the change.]

(b) Upon approval of the name change, the original licenses shall be surrendered to the Division.

**R156-17b-621. Operating Standards - Pharmacist Administration - Training.**

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

**KEY: pharmacists, licensing, pharmacies**

**Date of Enactment or Last Substantive Amendment: [November 21, 2011]2012**

**Notice of Continuation: February 23, 2010**

**Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)**

**Commerce, Occupational and Professional Licensing**

**R156-37-402**

**Continuing Professional Education for Controlled Substance Prescribers**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36873

FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division is proposing this rule filing to

implement the provisions of S.B. 127 which was passed during the 2012 General Session.

**SUMMARY OF THE RULE OR CHANGE:** Section R156-37-402 is being added to the rule to further define, as specified in S.B. 127, the educational content and requirements for controlled substance prescriber classes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-37-6(1)(a) and Subsection 58-1-106(1)(a) and Subsection 58-37f-301(1)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These proposed amendments are only a clarification of the statutory requirement and therefore, the Division has determined the proposed amendments should not have a fiscal impact to the state budget beyond those already identified in the fiscal analysis of S.B. 127.

◆ **LOCAL GOVERNMENTS:** The proposed amendments are only a clarification of the statutory requirement and therefore, the Division has determined the proposed amendments should not have a fiscal impact to local governments beyond those already identified in the fiscal analysis of S.B. 127.

◆ **SMALL BUSINESSES:** These proposed amendments are only a clarification of the statutory requirement and therefore, the Division has determined the proposed amendments should not have a fiscal impact to small businesses beyond those already identified in the fiscal analysis of S.B. 127.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments are only a clarification of the statutory requirement and therefore, the Division has determined the proposed amendments should not have a fiscal impact to other persons beyond those already identified in the fiscal analysis of S.B. 127.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments are only a clarification of the statutory requirement and therefore, the Division has determined the proposed amendments should not have a fiscal impact to affected persons beyond those already identified in the fiscal analysis of S.B. 127.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing clarifies the continuing professional education requirement. Therefore, no fiscal impact to businesses is anticipated.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at [ntaxin@utah.gov](mailto:ntaxin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 11/08/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Mark Steinagel, Director

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

**R156-37. Utah Controlled Substances Act Rule.**

**R156-37-402. Continuing Professional Education for Controlled Substance Prescribers.**

In accordance with Section 58-37-6.5, qualified continuing professional education requirements for controlled substance prescribers are further established as follows:

(1) All licensed controlled substance prescribers shall complete four hours of qualified continuing professional education during each two year period of licensure.

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

(3) Continuing education under this section shall:

(a) be prepared and presented by individuals who are qualified by education, training and experience to provide the controlled substance prescriber continuing education;

(b) have a method of verification of attendance and a post course knowledge assessment or examination; and

(c) teach content as set forth in Subsection 58-37-6.5(2).

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) continuing education shall be presented by an organization accredited to provide continuing medical education as set forth in Subsection 58-37-6.5(1)(b)(ii) and be approved as set forth in Subsection 58-37-6.5(1)(b)(iii); and

(b) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes.

(5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain.

**KEY: controlled substances, licensing, controlled substance database**

**Date of Enactment or Last Substantive Amendment: [February 8, 2010]2012**

**Notice of Continuation: February 21, 2012**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37f-301(1)**

**Commerce, Occupational and  
Professional Licensing  
R156-40  
Recreational Therapy Practice Act Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36892

FILED: 10/01/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Recreational Therapy Board are proposing amendments to update and clarify the rule as a result of statute amendments to Title 58, Chapter 40, which were passed during the 2012 General Session in S.B. 53.

**SUMMARY OF THE RULE OR CHANGE:** Statute and rule citations are updated throughout the rule, as well as minor wording changes throughout the rule. In Section R156-40-102, definitions for "approved graduate degree", "approved emphasis, option, or concentration in therapeutic recreation or recreational therapy" and "written plan of operation" are added to the rule. Other minor wording changes are made throughout this section. In Section R156-40-302a, minor amendments relating to master therapeutic recreation specialist (MTRS), therapeutic recreation specialist (TRS) and therapeutic recreation technician (TRT) educational requirements are made in this section. In Section R156-40-302b, experience requirements for a TRT were increased to 20 hours of direct supervision. Experience requirements are further clarified throughout this section to support the new statute language. In Section R156-40-302c, amendments are being proposed to clarify the examination requirements for a TRT license. In Section R156-40-302e, proposed amendments add that a supervisor is required to sign a patient chart and observe the TRT services. In Section R156-40-302f, proposed amendments clarify that a temporary license cannot be issued for a period to exceed 120 days to allow an applicant to pass the required examinations. In Section R156-40-304, continuing education is being added to clarify and establish the criteria for licensees to obtain continuing education which is now required due to the recent statute amendments. In Section R156-40-502, unprofessional conduct is being added to define additional categories of unprofessional conduct that are applicable to recreational therapy licensees.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-40-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Adds American Therapeutic Recreation Association's (ATRA) Code of Ethics, published by ATRA, November 2009

- ◆ Adds NCTRC National Job Analysis, Part V, published by NCTRC, January 2011
- ◆ Adds National Council for Therapeutic Recreation Certification (NCTRC) Certification Standards, Part 1, published by NCTRC, January 2012

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed MTRS, TRS, and TRTs and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed MTRS, TRS, and TRTs and applicants for licensure in those classifications. The proposed amendments may affect some businesses that hire TRTs in that they may need to adjust the TRT hire date until the person has completed the education, experience, and examination requirements. However, no fiscal impact is anticipated beyond those considered by the Legislature in passing S.B. 53.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed MTRS, TRS, and TRTs and applicants for licensure in those classifications. The proposed amendments being added to clarify continuing education requirements for recreational therapy licensees are only as a result of statute amendments to Title 58, Chapter 40. The Division also anticipates that TRT employers may see some increased costs relating to supervision expenses. However, no fiscal impact to other persons or licensees is anticipated beyond those considered by the Legislature in passing S.B. 53.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed MTRS, TRS, and TRTs and applicants for licensure in those classifications. The proposed amendments being added to clarify continuing education requirements for recreational therapy licensees are only as a result of statute amendments to Title 58, Chapter 40. The Division also anticipates that TRT employers may see some increased costs relating to supervision expenses. However, no fiscal impact to other persons or licensees is anticipated beyond those considered by the Legislature in passing S.B. 53.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing implements statutory amendments resulting from the passage of S.B. 53, including clarification of criteria for licensure such as continuing education requirements; it also makes minor technical changes. No fiscal impact to businesses is anticipated beyond those considered by the Legislature in passing S.B. 53.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at [ntaxin@utah.gov](mailto:ntaxin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/15/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, conference room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Mark Steinagel, Director

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

### **R156-40. Recreational Therapy Practice Act Rule.**

#### **R156-40-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or this rule:

(1) "~~Approved graduate degree in recreation therapy or a graduate degree with an approved emphasis in recreation therapy~~", as used in Subsection 58-40-302(2)(a)[5(1)(a)(i)], means an earned graduate (Masters, Ed.D., or Ph.D.) degree in recreational therapy or a graduate degree with an approved emphasis in recreational therapy, which includes:

(a) a minimum of nine semester hours or 12 quarter hours of upper division or graduate level course work in therapeutic recreation and/or recreational therapy;

(b) a minimum of 24 semester hours or 32 quarter hours of supportive coursework as outlined by the January 2012 NCTRC Certification Standards, Part I, which are incorporated by reference; and

(c)(i) an approved practicum which includes a minimum 480 hour, 12 consecutive week field placement experience in recreational therapy services that uses the therapeutic recreation process as defined in the January 2011 NCTRC National Job Analysis, which is incorporated by reference, under the supervision of an onsite field placement supervisor who is licensed in Utah as a TRS or MTRS; and

(ii) if the practicum is conducted outside Utah, the supervisor must be certified by NCTRC as an CTRS and meet NCTRC standards for field placement supervision. This practicum must be verified on an official university transcript.

(2) "Approved emphasis, option, or concentration in therapeutic recreation or recreational therapy", as used in Subsection 58-40-302(3)(a)(ii), means an emphasis, option or concentration posted on the transcript that meets the January 2012 NCTRC Certification Standards, Part I, which are incorporated by reference, including:

(a) a minimum of 18 semester or 24 quarter hours of therapeutic recreation and general recreation content coursework with no less than a minimum of 12 semester or 16 quarter hours in therapeutic recreation, consisting of a minimum of four three-credit hour courses;

(b) a total of 18 semester or 24 quarter hours of support coursework with a minimum of:

(i) three semester hours or three quarter hours coursework in the content area of anatomy and physiology;

(ii) three semester hours or three quarter hours coursework in the content area of abnormal psychology; and

(iii) three semester hours or three quarter hours coursework in the content area of human growth and development across the lifespan. The remaining semester hours or quarter hours of coursework must be fulfilled in the content area of "human service" as defined by the NCTRC; and

(c)(i) a minimum 480 hour, 12 week field placement experience in therapeutic recreation services that uses the therapeutic recreation process as defined in the January 2011 NCTRC National Job Analysis, which is incorporated by reference, under the supervision of an onsite field placement supervisor who is both state licensed as a TRS or MTRS and NCTRC CTRS certified and meets the standards for field placement supervision; and

(ii) if the practicum is conducted outside Utah, the supervisor must be certified by NCTRC as a CTRS and meet NCTRC standards for field placement supervision. This practicum must be verified on an official university transcript.

([2]3) "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the [~~National Council for Therapeutic Recreation Certification~~]NCTRC.

([3]4) "Full-time, on-site", as used in Subsections [~~58-40-5(3)(e), 58-40-6(3)(a)(i) and (3)(b)(i)~~]58-40-601(3)(a) and (b), means an individual who is employed on the premises with the hiring agency for a minimum of 30 hours per week.

([4]5) "Maintain the on[-]going documentation", as used in Subsection 58-40-~~[6]601(3)(b)~~, means:

(a) [~~collecting data for the assessment process;~~

(b) [~~documenting the on[-]going treatment or intervention provided to clients according to the treatment plan; and~~

(e)[b] providing [~~periodic~~]review of [~~client~~]patient status according to federal, state, and agency regulations.

([5]6) "MTRS" means a person licensed as a master therapeutic recreation specialist.

([6]7) "NCTRC" means the National Council for Therapeutic Recreation Certification.

([7]8) "Supervision", as used in [~~Subsections 58-40-5(3)(e), 58-40-6(1)(a), (2)(b), (3)(a)(i) and (3)(b)(i)~~]Section 58-40-601, means full-time, on-site oversight by an MTRS or TRS of the recreational therapy services offered.

([8]9) "Supervision of a temporary TRS", as used in Subsection R156-40-~~[302e(d)]302f(1)(d)~~, means that the MTRS or

TRS supervisor is responsible for the recreational therapy activities performed by the temporary TRS and will review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the MTRS or TRS in the treatment plan.

(9) "TRS" means a person licensed as a therapeutic recreation specialist.

(10) "TRT" means a person licensed as a therapeutic recreation technician.

(12) "Written plan of operation", as used in Subsection 58-40-102(6)(b)(viii), means a comprehensive management plan that outlines recreational therapy services that, at a minimum, includes:

- (a) vision and mission statement;
- (b) policy and procedures;
- (c) assessment protocol;
- (d) treatment and/or intervention plan;
- (e) scope of care; and
- (f) personnel management.

(13) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

#### **R156-40-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Section 58-40-302, the educational requirements for licensure include:

(1) An MTRS applicant shall:

(a) complete an approved graduate degree as defined in R156-40-102(1);

(b) have a current NCTRC certification as a CTRS or a current license as a TRS; and

(c) document completion of the education and 4000 hours of paid experience while nationally certified as a CTRS or licensed as a TRS.

(2) A TRS applicant shall:

(a) have a current NCTRC certification as a CTRS; and

(b) document completion of the education and practicum requirements for licensure as a TRS on an official university transcript.

(3) A TRT applicant shall:

(a) have an approved educational course in therapeutic recreation taught by an MTRS, as required by Subsection 58-40-302(4)(b)(i), which shall consist of 90 hours of structured education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:

- (i) theories and concepts of recreational therapy;
- (ii) the therapeutic recreation process;
- (iii) characteristics of illness and disability and their effects on leisure;
- (iv) medical and psychiatric terminology including psychiatric, pharmacology, gerontology, and abbreviations;
- (v) ethics;
- (vi) role and function of other health and human service professionals, including: agencies, medical specialists and allied health professionals; and
- (vii) health and safety.

#### **R156-40-302b. Qualifications for Licensure - Experience Requirements.**

In accordance with Section 58-40-302, the experience requirements for licensure include:

(1) An MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-302(2)(b), which means an individual must either work as a TRS in Utah in a paid position practicing recreational therapy and/or work outside of Utah as a CTRS in a paid position practicing recreational therapy [as defined in Subsection 58-40-2(4)(a) and (b) for 4000 hours].

(2) A TRS is required to complete an approved practicum, as required by Subsection 58-40-302(3)(b), which means a practicum verified on the degree transcript.

(3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-302(4)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed MTRS or TRS supervisor, that includes:

(a) a minimum of 20 hours of direct face to face supervision of programming, documentation and treatment intervention by the MTRS or TRS supervisor;

(b) training in the therapeutic recreation process as defined in Subsections 58-40-2(4)(a) and (b) recreational therapy or therapeutic recreation process as defined in Subsection 58-40-102(5) and (6);

(c) interdisciplinary contact;

(d) administration contact; and

(e) community relations.

#### **R156-40-302c. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-40-5(1)(e), 58-40-5(2)(f) and 58-40-5(3)(g) 58-40-302(2)(c), (3)(c) and (4)(d), applicants for licensure shall pass the following examinations:

(1) Applicants for licensure as an MTRS or TRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as an CTRS.

(2) Applicants for licensure as a TRT shall pass both the [Utah Recreation Therapy Theory Examination for TRT with a minimum passing score of 70%] Therapeutic Recreation Technician Theory Examination with a minimum score of 70% and the Therapeutic Recreation Technician Laws and Rules Exam with a minimum score of 75%.

(3) Applicants for licensure as a TRT who fail the Therapeutic Recreation Technician Theory Examination three consecutive times must repeat the educational coursework.

#### **R156-40-302d. Time Limitation for TRT applicants.**

(1) In accordance with Subsection 58-40-302(4) and Sections R156-40-302a, R156-40-302b and R156-40-302c, a TRT applicant shall pass the examinations and apply for licensure after completion of the 125 practicum hours required under Subsection R156-40-302b(3) and must do so within the same nine month period referred to in that Subsection.

(2) A TRT applicant who does not complete the education, practicum and examinations within nine months is not eligible to be employed as a TRT in a therapeutic recreation department.

(3) A TRT student who does not seek licensure within two years after completion of the education course shall retake the education, practicum and pass the examination prior to applying for licensure.

**R156-40-302e. Qualifications for Supervision.**

"Supervision of a therapeutic recreation technician", as used in Subsection 58-40-~~6(3)(a)(i) and (3)(b)(i)~~601(3), means that the MTRS or TRS supervisor is responsible for:

(1) providing on-site training, observation, direction and evaluation ~~as defined in Subsection 58-40-2(4)(b);~~ to include:

(a) reviewing the recreational therapy intervention to be performed by the TRT as defined by the treatment plan;

(b) demonstrating as evidenced by the signature of the MTRS or TRS in the patient chart ~~periodic~~ review and evaluation of ongoing documentation;

(c) reviewing and observing the recreational therapy program according to administrative and governing regulations; and

(d) reviewing and evaluating adherence to the standards of the profession.

**R156-40-302f. Qualifications for Temporary License as a TRS - Supervision Required.**

(1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:

(a) submit an application for temporary license in the form prescribed by the division which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) meet all the requirements for licensure, except passing the NCTRC examination; and

(d) practice recreational therapy under the supervision of a Utah licensed TRS or MTRS as defined in Subsection R156-40-102(8).

(2) The temporary license ~~will not be issued for a period greater than ten months~~ shall be issued for a period not to exceed 120 days to allow the applicant to pass the NCTRC examination.

(3) The temporary license will not be renewed or extended for any purpose.

**R156-40-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 40 is established by rule in Section R156-1-308a(1).

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

**R156-40-304. Continuing Education.**

In accordance with Section 58-40-304, qualified continuing education requirements are established as follows:

(1) All licensed MTRS, TRS, and TRT's shall complete 20 hours of qualified continuing education or provide a current CTRS certification during each two-year period of licensure.

(2) Qualified continuing education hours for licensees who have not been licensed for the entire two-year period will be prorated from the date of licensure.

(3) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide recreational therapy continuing education; and

(c) have a method of verification of attendance and completion.

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by, or under the sponsorship of:

(i) the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges; or

(iii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of recreational therapy;

(b) a maximum of ten hours per two-year period may be recognized for teaching continuing education courses relevant to recreational therapy;

(c) a maximum of 12 hours per two-year period may be recognized for continuing education that is provided via the internet and/or webinar which provides a certificate of completion;

(d) a maximum of six hours per two-year period may be recognized for continuing education provided by the Division of Occupational and Professional Licensing;

(e) a maximum of four hours per two-year period may be recognized for CPR and first aid certification through a live course, not online; and

(f) a maximum of six hours per two-year period may be recognized for publications in an article, journal, newsletter or other professional publications.

(5) If properly documented that a licensee is subject to circumstances which prevent that licensee from meeting the continuing education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years. However it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing education for a period of six years and if requested, demonstrate the licensee meets requirements under this section.

**R156-40-502. Unprofessional Conduct.**

Unprofessional conduct includes:

(1) failing to establish and maintain professional boundaries with a patient or former patient;

(2) exploiting a current and/or former patient for personal gain;

(3) failing as an MTRS/TRS to ensure the student TRT completes the minimum required education and experience prior to working with patients;

(4) failing as an MTRS/TRS to ensure the student TRT is competent to provide recreational therapy services when signing the education and experience verification; and

(5) failing to abide by the provisions of the American Therapeutic Recreation Association (ATRA) Code of Ethics, November 2009, which is incorporated by reference.

**KEY: licensing, recreational therapy, recreation therapy**  
**Date of Enactment or Last Substantive Amendment:**  
**[December 22, 2008]2012**  
**Notice of Continuation: August 15, 2011**  
**Authorizing, and Implemented or Interpreted Law: 58-40-101;**  
**58-1-106(1)(a); 58-1-202(1)(a)**

Governor, Economic Development  
**R357-7**  
 Utah Capital Investment Board

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 36860  
 FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** There is a statutory requirement to create a rule.

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule establishes the manner by which the Utah Capital Investment Board conducts its affairs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63M-1-1206

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Process and necessary staff are already in place for the Board to conduct its affairs.
- ◆ **LOCAL GOVERNMENTS:** Local government is not involved in the Board issuing tax credits.
- ◆ **SMALL BUSINESSES:** Small businesses eligible for the tax credits will not be affected by the rule in the application process.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other applicants for the tax credits will not be affected by the rule in the application process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No new compliance costs in application process, as process is already established in policy and practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No new fiscal impact as application and approval process is already established in policy and practice.

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

GOVERNOR  
 ECONOMIC DEVELOPMENT  
 60 E SOUTH TEMPLE 3RD FLR  
 SALT LAKE CITY, UT 84111  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Zachary Derr by phone at 801-538-8746, by FAX at 801-538-8888, or by Internet E-mail at zderr@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Spencer Eccles, Executive Director

**R357. Governor, Economic Development.**

**R357-7. Utah Capital Investment Board.**

**R357-7-1. Purpose.**

(1) The purpose of these rules is to establish the manner by which the Utah Capital Investment Board (UCIB) conducts its affairs.

**R357-7-2. Authority.**

(1) UCA 63M-1-1206 requires the UCIB to make rules establishing the manner by which it conducts its affairs.

**R357-7-3. Conduct.**

The UCIB conducts its affairs to best meet its objectives of mobilizing venture equity capital for investment in a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The UCIB conducts its affairs in a way to meet these objectives by:

(1) Making staff available to present potential tax credit agreements to the UCIB and Utah Capital Investment Corporation (UCIC) for approval;

(2) Reviewing and approving or denying potential agreements with financial entities within ninety (90) days of presentation to the UCIB;

(3) If approved by the UCIB, issuing contingent tax credit certificates to designated investors for the allocation and issuance of contingent tax credits;

**KEY: economic development, capital investments**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 63M-1-1201**

**Governor, Economic Development**  
**R357-9**  
**Alternative Energy Development Tax Incentives**

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 36855  
 FILED: 09/25/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Statutory amendments requiring rulemaking.

SUMMARY OF THE RULE OR CHANGE: Establishing the standards an alternative energy entity shall meet to qualify for a tax credit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63M-1-3013

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Tax credit program has been in place since 2008. This amendment does not significantly affect the administration of the program.
- ◆ **LOCAL GOVERNMENTS:** The local government approval process is similar to the process already in place since 2008 and the new rule will not affect local government with their involvement.
- ◆ **SMALL BUSINESSES:** Application process will be similar to process in place since 2008, so no new costs will be imposed by the rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons will be affected, application and approval process will be similar to process effective since 2008.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no application fee and there will be no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None.

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

GOVERNOR  
 ECONOMIC DEVELOPMENT  
 60 E SOUTH TEMPLE 3RD FLR  
 SALT LAKE CITY, UT 84111  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Zachary Derr by phone at 801-538-8746, by FAX at 801-538-8888, or by Internet E-mail at [zderr@utah.gov](mailto:zderr@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Spencer Eccles, Executive Director

**R357. Governor, Economic Development.**

**R357-9. Alternative Energy Development Tax Incentives.**

**R357-9-1. Purpose.**

- (1) The purpose of these rules is to establish:
  - (a) The standards an alternative energy entity shall meet to qualify for a tax credit;
  - (b) The procedures by which the Governor's Office of Economic Development issues tax credit certificates.

**R357-9-2. Authority.**

- (1) UCA 63M-1-3013(1)(a) requires the office to make rules setting the standards an alternative energy entity shall meet to qualify for a tax credit.

**R357-9-3. Definitions.**

- (1) Terms in these rules are used as defined in UCA 63M-1-3102.

**R357-9-4. Standards.**

- (1) Applicants shall use the application form provided by the office and follow the procedures and requirements set forth in UCA 63M-1-3104 for obtaining a tax credit certificate.
- (2) The office shall review accepted applications based upon the following criteria:
  - (a) Compliance with the requirements set forth in UCA 63M-1-3103;
  - (b) The overall economic impact on the state related to providing the tax credit, taking into account such factors as:
    - (i) the number of new incremental jobs to Utah; or
    - (ii) capital investment in the state; or
    - (iii) new state revenues; or
    - (iv) any combination of Subsections (i), (ii), or (iii); or
    - (v) other criteria as established by the office by policy publication.
  - (3) The office shall keep a record of the review of applications based on the criteria in subsection (2).
  - (4) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (2) and (3) and according to the requirements and procedures set forth in UCA 63M-1-3104.
  - (5) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (4) with the business entity.

**KEY: economic development, alternative energy, tax credits**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 63M-1-3101**

Health, Administration  
**R380-42**  
 Open and Public Meetings Act  
 Electronic Meetings

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36843

FILED: 09/20/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to authorize use of electronic meetings.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures for conducting electronic meetings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Using electronic meetings should be budget neutral or generate small savings for state participants.

◆ LOCAL GOVERNMENTS: Using electronic meetings should be budget neutral or generate small savings for local government participants.

◆ SMALL BUSINESSES: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.

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

HEALTH  
 ADMINISTRATION  
 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:

◆ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 12/10/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R380. Health, Administration.**

**R380-42. Open and Public Meetings Act Electronic Meetings.**

**R380-42-1. Authority and Purpose.**

(1) Utah Code Section 52-4-207 requires a state public body that holds electronic meetings to have a rule governing the use of electronic meetings. This rule establishes procedures for conducting electronic meetings by each public body created by statute within Utah Code, Title 26 or by Department rule, except for any public body that has adopted its own rule.

(2) A public body with rule making authority may adopt a separate rule governing its electronic meetings.

(3) This rule is authorized by Sections 52-4-207, 63G-3-201 and 26-1-5.

**R380-42-2. Definitions.**

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Meeting" means a meeting of the public body that is required to be public by the provisions of the Open and Public Meetings Act, Utah Code Title 52, Chapter 4.

(2) "Electronic meeting" includes any meeting where at least one member of the public body participates in the public meeting by telephonic or other electronic means.

(3) "Presiding officer" means the member of the public body designated by statute, rule, or vote of the public body to preside at a meeting of the public body.

(4) "Business day" means a day that the Department is open to the public for the conduct of business, exclusive of weekends and state holidays.

**R380-42-3. Designation of Electronic Meetings.**

(1) The presiding officer may schedule any meeting as an electronic meeting upon the presiding officer's discretion or upon request of any member of the public body.

(a) A member of the public body may request that the member's participation in the meeting be allowed electronically up to 48 hours, but no less than two business days, prior to the commencement of the meeting. The presiding officer may refuse a member's request to hold a meeting electronically.

(b) If the Department cannot technically arrange for the meeting to be held electronically, the presiding officer's decision to allow electronic participation the Department may deny the request.

(c) The presiding officer or the Department may restrict the number of connections for members to participate in the meeting based on available equipment capability.

(d) If budget constraints do not allow the Department to provide an electronic connection at no charge to the member, the member who chooses to participate electronically may be required to do so at his or her own cost.

(2) No vote of the public body is necessary to include other members of the public body to join the meeting through an electronic connection.

**R380-42-4. Anchor Location.**

(1) Unless otherwise designated in the posted public notice of the meeting, the anchor location for an electronic meeting held by the public body is the Cannon Health Building located at 288 North 1460 West, Salt Lake City, Utah.

(2) The person presiding at the meeting may restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability.

(3) The Department shall provide a meeting room for an anchor location for any meeting that is held electronically.

**R380-42-5. Quorum, Member Participation.**

(1) A quorum is not required to be present at the anchor location.

(2) A member of the public body who participates in the meeting via electronic means shall be counted as present at the meeting for quorum, participation, and voting requirements.

**R380-42-6. Public Participation.**

Interested persons and the public may attend and monitor the open portions of the meeting at the anchor location.

**KEY: electronic meetings, open and public meetings**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 52-4-207**

**Health, Disease Control and  
Prevention, Epidemiology  
R386-705**

**Epidemiology, Health Care Associated  
Infection**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36853

FILED: 09/24/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to a new regulatory requirement from the Centers for Medicaid and Medicare Services (CMS), and the passage of H.B. 55, Health Care Associated Infections, 2012 General Session, the Utah Department of Health proposes to amend the Healthcare Associated Infection (HAI) rule to replace reporting requirements related to health care

associated infections with data sharing requirements for health care associated infection data reported by facilities to the National Healthcare and Safety Network (NHSN). The revised rule also enables facilities that will be required to report healthcare worker (HCW) influenza vaccination data to NHSN to share data with UDOH in order to meet the reporting requirement for HCW influenza vaccination data already in place in the rule. In addition, the rule amendment modifies the definition of HCW to be consistent with the Centers for Disease Control and Prevention (CDC) definition.

SUMMARY OF THE RULE OR CHANGE: The rule change: 1) replaces healthcare associated infection reporting requirements with data sharing requirements for healthcare associated infection data reported by facilities to NHSN; 2) enables facilities that report HCW influenza vaccination data to NHSN to share that data with the UDOH in order to meet the HCW influenza vaccination reporting requirement; and 3) updates the definition of HCW to be consistent with the CDC definition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-6-3 and Section 26-6-31 and Section 26-6-7 and Subsection 26-1-30(2)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Bureau of Epidemiology staff assigned to this program conduct periodic statewide analyses of Central Line Associated Blood Stream Infection (CLABSI) and HCW data as part of existing duties. UDOH has received \$100,000 for H.B. 55 mandated activities, including annual reporting and validation of mandated CMS healthcare associated infections. Efforts to improve rates of HAI (once baseline rates have been established) will in the long run benefit all Utah patients, including Medicaid recipients, and reduce the costs associated with excess healthcare expenditures. Analysis of the data will be achieved electronically. Reports sent to facilities will be a combination of electronic and printed materials. Printed materials are expected to cost about \$200 for printing materials, excluding personnel time.

◆ LOCAL GOVERNMENTS: If a local government owns a healthcare facility, this may have an indirect impact on the subsidy they are providing to that facility. Currently, there are only a few that fall in this category, and these are rural. The incidence of these types of events in rural facilities tends to be low due to the low number of hospitals, type of patient care provided, and patient days. Costs are expected to be minimal for facilities owned by local governments to authorize UDOH to access data entered into NHSN; costs will be related to personnel time for facilities to access the NHSN system and accept a template for reporting different data elements that UDOH provides for data sharing. There may be some initial costs for facility staff to learn NHSN's reporting system and requirements if they are just beginning to report to NHSN. It is expected there may be savings as compared to current Rule requirements for HAIs since facilities will be sharing data already reported to NHSN; however, costs of

data sharing and validation related to new UDOH requirements are anticipated to be about the same as reporting costs related to the current rule.

♦ **SMALL BUSINESSES:** Costs are expected to be minimal for facilities to authorize UDOH to access data entered into NHSN; costs will be related to personnel time for facilities to access the NHSN system and accept a template for reporting different data elements that UDOH provides for data sharing. There may be some initial costs for facility staff to learn NHSN's reporting system and requirements if they are just beginning to report to NHSN. It is expected there may be savings as compared to current rule requirements for health care associated infections since facilities will be sharing data already reported to NHSN; however, costs of data sharing and validation related to new UDOH requirements are anticipated to be about the same as reporting costs related to the current rule. Two licensed hospitals in Utah that are required to report HCW influenza vaccination rates have less than 50 employees on their payroll. While more employee types may be included in the revised HCW definition, expected costs to small business continue to be approximately seven minutes to report data into the state reporting system (Utah Facility Online Reporting System or UFORS), or \$2.45 (7 minutes x \$35 hour) per year, per report. Expected costs for gathering HCW influenza vaccination data are difficult to determine since each facility gathers data differently over different time frames; additional costs related to the HCW definition change are expected to be minimal, but are difficult to approximate. Expected costs for facilities to report HCW influenza vaccination data by sharing data through NHSN with UDOH are difficult to determine as reporting HCW influenza vaccination data will not be a requirement for facilities until January 2013, but are expected to be minimal and similar to costs associated with sharing data through NHSN for a HAI.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Costs are expected to be minimal for facilities to authorize UDOH to access data entered into NHSN; costs will be related to personnel time for facilities to access the NHSN system and accept a template for reporting different data elements that UDOH provides for data sharing. There may be some initial costs for facility staff to learn NHSN's reporting system and requirements if they are just beginning to report to NHSN. It is expected there may be savings as compared to current rule requirements for health care associated infections since facilities will be sharing data already reported to NHSN; however, costs of data sharing and validation related to new UDOH requirements are anticipated to be about the same as reporting costs related to the current rule. There are 60 licensed hospitals in Utah required to report HCW influenza vaccination data. While more employee types may be included in the revised HCW definition, expected costs to for facilities continue to be approximately seven minutes to report data into the state reporting system (Utah Facility Online Reporting System or UFORS), or \$2.45 (7 minutes x \$35 hour) per year, per report. Expected costs for gathering HCW influenza vaccination data are difficult to determine since each facility gathers data differently over

different time frames; additional costs related to the HCW definition change are expected to be minimal, but are difficult to approximate. Expected costs for facilities to report HCW influenza vaccination data by sharing data through NHSN with UDOH are difficult to determine as reporting HCW influenza vaccination data will not be a requirement for facilities until January 2013, but are expected to be minimal and similar to costs associated with sharing data through NHSN for a healthcare associated infection. Patients will not initially be affected by the reporting requirement, but should benefit from the reporting implementation. As statewide interventions are in place, benefits from reductions in healthcare associated infection rates, improvements in patient safety, reduction in mortality and morbidity, and reduction in expenses associated with HAIs will be achieved. Projected savings include a decrease in length of stay and improved employee productivity as infections are reduced due to statewide surveillance and implementation of science-based interventions.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** As noted above, compliance costs are expected to be minimal for facilities to authorize UDOH to access data entered into NHSN; costs will be related to personnel time for facilities to access the NHSN system and accept a template for reporting different data elements that UDOH provides for data sharing. It is expected there may be savings as compared to current rule requirements for HAIs since facilities will be sharing data already reported to NHSN; however, costs of data sharing and validation related to new UDOH requirements are anticipated to be about the same as reporting costs related to the current rule. Reporting HCW influenza vaccination data to UFORS is estimated to take seven minutes per report, or \$2.45 per annual report. It is not possible to approximate costs of gathering HCW influenza vaccination data for a single facility since there is a range of methods used by different facilities. Expected costs for a facility to report HCW influenza vaccination data by sharing data through NHSN with UDOH are difficult to determine as reporting HCW influenza vaccination data will not be a requirement until January 2013; costs of establishing data sharing with UDOH are expected to be minimal and similar to costs associated with sharing data through NHSN for a HAI.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The current rule on HAI with local reporting requirements will change. The proposal is to allow facilities to comply by granting to health department personnel access to national data that facilities are required to report by federal rules. Overall this should be a savings to facilities and a reduction in regulatory impact.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
EPIDEMIOLOGY  
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:  
 ♦ Melissa Stevens Dimond by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R386. Health, Disease Control and Prevention, Epidemiology. R386-705. Epidemiology, Health Care Associated Infection. R386-705-1. Authority and Purpose.**

This rule establishes ~~[reporting]~~[data sharing] requirements for health care associated infections and for influenza vaccination of health care workers. It is authorized by Utah Code S[ub]sections 26-1-30(2)(a), (b), (d), (e), and (g), 26-6-3, ~~[and]~~26-6-7, and 26-6-31.

**R386-705-2. Definitions.**

For purposes of this rule:

(1) "Ambulatory surgical center" or "ASC" is as defined in Utah Code Section 26-21-2.

~~(1) "BSI" means a blood stream infection that meets the criteria in Subsection 22(1).~~

~~(2) "Central line" means a vascular access catheter that passes through or has a tip ending at or close to the heart or in one of the great vessels. Great vessels include aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic vein, internal jugular vein, subclavian vein, external iliac vein, or common femoral vein. The following vascular access catheters are central lines: subclavian vein catheter, internal jugular vein catheter, PICC (peripherally inserted central catheter), Swan-Ganz catheter, Cook, Shiley, Port-a-Cath, Broviac, Groshong, Hickman, or dialysis catheter. The following catheters are not central lines for purposes of this rule: arterial catheters inserted into an artery, midline PICC, and pacemaker wires.~~

~~(3) "Central line associated blood stream infection" or "CLA-BSI" means a primary blood stream infection that is associated with the presence of a central line that meets the criteria in Subsection 21(3).~~

~~(4) "Common skin commensal" means microorganisms that are commonly found on the skin and often indicate contamination of the blood culture media rather than identification of a pathogenic organism when identified in blood culture tests, and include coagulase negative staphylococci, propionibacterium species, corynebacterium species, diphtheroids, bacillus species, and micrococcus species.~~

~~(2) "Department" means the Utah Department of Health.~~

~~(3) "End stage renal disease facility" is as defined in Utah Code Section 26-21-2.~~

~~(4) "General acute hospital" is s defined in Utah Code Section 26-21-2.~~

~~(5) "Health care facility" is as defined in Utah Code Section 26-21-2[means a facility or agency licensed pursuant to Utah Code Title 26, Chapter 21].~~

~~(6) "Health care workers" or "HCW"s [means any person employed by a health care facility and who in the usual course of work either enters patient rooms or provides direct patient care. Health care workers may]include, but are not limited to, personnel such as physicians, nurses, nursing assistants, therapists, technicians, [emergency medical service personnel,]dental personnel, pharmacists, laboratory personnel, autopsy personnel, contractual staff not employed by the health care facility, and persons (e.g., clerical, dietary, housekeeping, maintenance, and volunteers) not directly involved in patient care, but potentially exposed to infectious agents that can be transmitted to and from employees of a healthcare facility[dietary, housekeeping, and maintenance personnel].~~

~~(7) "Specialty hospital" is as defined in Utah Code Section 26-21-2.~~

~~(7) "Intensive care unit" or "ICU" means any general or specialty unit that provides intensive observation, diagnosis, and therapeutic procedures for patients who are critically ill who are 1-year-of-age or older. An ICU includes coronary care units, medical intensive care units, medical/surgical intensive care units, surgical intensive care units, trauma intensive care units, neurosurgical intensive care units, burn trauma intensive care units, and pediatric intensive care units that provide care for at least some patients.~~

~~(8) "Pathogenic organism" means a microorganism that is not a common skin commensal.~~

**R386-705-3. Health Care Associated Infections Reporting.**

~~(1) Pursuant to Utah Code Section 26-6-31, facilities required to report data on the incidence and rate of health care associated infections as mandated by the Center for Medicare and Medicaid Services (CMS) to the National Healthcare Safety Network (NHSN) in the Centers for Disease Control and Prevention (CDC) shall:~~

~~(a) Share data with the Department by joining the Department NHSN Group, UDOH HAI (ID# 17686), and confer rights to the Department in NHSN. All data shared with the Department under this rule shall exclude patient identifiers unless necessary for reporting requirements and data validation.~~

~~(b) Follow CMS rules and NHSN protocols for defining terms and criteria for reporting infection data.~~

~~(2) Facilities required to share data submitted to NHSN with the Department include:~~

~~(a) Ambulatory surgical facilities;~~

~~(b) General acute hospitals;~~

~~(c) Specialty hospitals;~~

~~(d) End stage renal disease facilities; and~~

~~(e) Any other facilities as required by CMS.~~

~~(3) Facilities required to report data to NHSN shall confer rights to the Department for all reported data elements, except for patient identifiers unless necessary for reporting requirements, including for data validation, for the following conditions:~~

~~(a) Central line associated bloodstream infections (CLABSI);~~

~~(b) Catheter associated urinary tract infections;~~

~~(c) Surgical site infections from procedures on the colon and abdominal hysterectomy;~~

~~(d) Methicillin-resistant Staphylococcus aureus bacteremia;~~

~~(e) Clostridium difficile infection of the colon; and~~

~~(f) Any other health care associated infections reported to NHSN as required by CMS.~~

**R386-705-4. Influenza Vaccination Rate Reporting.**

~~(1) Each licensed hospital and licensed long term care facility shall report its influenza vaccination rates for the current influenza season by January 31.~~

~~(2) Reports of influenza vaccination rates shall include the total number of HCWs and the number of those workers who are documented to have received an influenza vaccine for the current influenza season.~~

~~(a) Licensed hospitals that report HCW influenza vaccination data to NHSN may confer rights to the Department to HCW influenza vaccination data (excluding any patient identifiers) to fulfill this reporting requirement.~~

~~(b) Licensed hospitals that do not confer rights to the Department for HCW influenza vaccination data through NHSN shall report HCW influenza vaccination data online to the Department through the Utah Facility Online Reporting System (UFORS). Facilities may contact the Bureau of Epidemiology at (801) 538-6191 with questions about UFORS, to report a problem, or to obtain instructions for using the system.~~

~~(c) Influenza vaccination rates reported to UFORS shall be measured using complete enumeration of all HCWs in the facility during the season and the number of them who were vaccinated during that season.~~

~~(d) Licensed long term care facilities shall report HCW influenza vaccination data according to requirements in Utah Administrative Code R432-40, the Long-Term Care Facility Immunizations Rule.~~

**~~R386-705-3. Reports.~~**

~~(1) All hospitals shall, for all general or specialty care ICU beds, except bone marrow transplant units, newborn or neonatal intensive care units, or nursing areas that provide step-down, intermediate care, or telemetry monitoring only, report:~~

~~(a) the number of central line patient days; and~~

~~(b) each case of CLA-BSI.~~

~~(2) Each hospital and each long term care facility shall report its influenza vaccination rates for its healthcare workers.~~

**~~R386-705-4. Health Care Associated Infection Report Methodology.~~**

~~The information required by this rule shall be reported to the Utah Department of Health, Bureau of Epidemiology using a form or electronic system approved by the Department. All facilities required to report shall report CLA-BSI quarterly for the January through March quarter by May 15, for the April through June quarter by August 15, for the July through September quarter by November 15, and for the October through December quarter by February 15.~~

**~~R386-705-10]5. Health Care Associated Infection Prevention.~~**

~~Each facility required to [report]share data with the Department as described in R386-705-3 [under Subsection 3(1)-] shall implement processes to prevent [central line-associated blood stream infections]the incidence of health care associated infections.~~

~~(1) The processes shall include at least one intervention that is proven by scientifically valid means to be effective in health care associated infection prevention[ng][CLA-BSI]. Interventions that have been recommended by an accepted health authority, including the [Centers for Disease Control and Prevention]CDC, or the federal Hospital Infection Control Practices Advisory Committee (HICPAC), meet this requirement.~~

~~(2) The facility shall have a system to monitor [that program]these processes and shall make information about them [program]available upon request.~~

**~~R386-705-20. Central Line Days.~~**

~~(1) Each facility required to report under this rule shall report central line patient days.~~

~~(a) The facility shall count the number of patients who were at least one year of age and with a central line in place and resident in the ICU at the time of the count.~~

~~(b) The count shall be performed at the same time each day, within 1 hour before or after the target time, during the reporting period.~~

~~(c) A patient with two or more central lines in place at the time of the count is counted as one patient with a central line on that day.~~

~~(d) The facility shall calculate the sum of the individual daily counts for each day in the reporting period to arrive at the total for the reporting period.~~

~~(2) The number of central line days may be estimated based on a valid sampling method.~~

**~~R386-705-21. Blood Stream Infection Reports.~~**

~~(1) Each facility required to report under this rule shall report each case of CLA-BSI that occurs in each patient who is at least one year of age and who was either:~~

~~(a) in an ICU at the time the CLA-BSI was identified and had been in the ICU for at least 2 days prior to that time; or~~

~~(b) had been in an ICU within 2 days prior to the time the CLA-BSI was identified;~~

~~(2) The time the CLA-BSI is identified is the time that the first positive blood culture result used to identify the CLA-BSI was collected from the patient.~~

~~(3) A case of CLA-BSI is reportable if meets the criteria in Subsections 22(1), (4), and (5) and does not meet the criteria in Subsection 22(3).~~

~~(4) For each case of CLA-BSI, the hospital shall report:~~

~~(a) the date the CLA-BSI was identified;~~

~~(b) the type of ICU in which the case occurred, i.e., the ICU in which the patient resided at identification of the CLA-BSI if in ICU at the time, or the ICU from which patient was most recently discharged if not in ICU at the time;~~

~~(c) the organism or organisms isolated from blood cultures associated with the CLA-BSI episode; and~~

~~(d) whether the CLA-BSI was considered a mixed BSI episode based on meeting the criteria in Subsections 22(2).~~

~~(5) The Utah Department of Health shall evaluate the case definitions and reporting algorithm at least annually with input from the users group and make any needed clarifications or changes.~~

~~**R386-705-22. Classification Criteria for Central Line Associated Bloodstream Infections.**~~

~~Definitions of bloodstream infections established in this rule are not to be construed as technical medical definitions of bloodstream infections, but only as definitions necessary to establish a reporting requirement. In reporting CLA-BSI under this rule, facilities shall apply the following criteria as required by Section R386-705-21:~~

~~(1) Criteria 1-BSI:~~

~~(a) at least one blood culture result includes a pathogenic organism;~~

~~(b) at least two blood culture results from specimens obtained at different times or from specimens drawn at different phlebotomy sites, e.g., left arm and right arm, within a 2 day period include the same type of common skin commensal organism; or~~

~~(c) at least one blood culture result includes a common skin commensal organism and antibiotic treatment effective against that organism was started on the day that the culture was collected and was continued for greater than three days.~~

~~(2) Criteria 2-Mixed BSI:~~

~~A BSI is a mixed BSI episode if more than one type of organism is identified in blood culture results obtained within a 5-day period.~~

~~(3) Criteria 3-Secondary BSI:~~

~~(a) A BSI is a secondary BSI if the organism is a pathogenic organism and is detected in a culture from a source other than blood that:~~

~~(i) was obtained from the patient within the 3 days before or 7 days after the positive blood culture;~~

~~(ii) is not a surveillance culture, i.e., a culture obtained routinely to detect carriage of an organism and not to diagnose an infection that is suspected based on clinical findings;~~

~~(iii) is not a culture of a catheter tip; and~~

~~(iv) is not a yeast obtained in a culture from respiratory source.~~

~~(b) A mixed BSI episode is secondary if any one of the organisms detected in blood cultures during the current episode meets the criteria for a secondary BSI.~~

~~(4) Criteria 4-New Episode:~~

~~A primary BSI is a new episode of BSI if:~~

~~(a) it is the first BSI in the patient during the patient's current hospitalization;~~

~~(b) it is the first time this organism is detected in the patient and no other BSI was detected in the patient in the previous 5 days; or~~

~~(c) the organism was detected in a previous blood culture from this patient and that blood culture was collected more than 30 days before the blood culture indicating the current BSI episode.~~

~~(5) Criteria 5-Central Line:~~

~~A BSI is a CLA-BSI if a central line was in place for at least two days before the first blood culture identifying the BSI was collected.~~

~~R386-705-25. Influenza Vaccination Rate Reporting.~~

~~(1) Reports of influenza vaccination rates shall include the number of health care workers and the number of those workers who are documented to have received an influenza vaccine for the current influenza season. Influenza vaccination rates may be measured by complete enumeration of all health care workers in the facility during the season and the number of them who were vaccinated during that season or may be estimated by a cross-sectional assessment.~~

~~(2) Each hospital and licensed long term care facility shall report its influenza vaccination rates for the current influenza season by January 31.~~

~~**[R386-705-100]6. Attestation Required.**~~

~~Each facility required to [report] share data with the Department as described in R386-705-3 and R386-705-4 [under Subsection 3(1);] shall attest to the implementation and effectiveness of its health care infection prevention program, as described in R386-705-5, and its systems for reporting, as required by this rule, once every three years.~~

~~**R386-705-101]7. Penalties.**~~

~~[As required by Section 63-46a-3(5):] An entity that violates any provision of this rule may be assessed a [civil money-] penalty as provided in Utah Code Section 26-23-6.~~

~~**KEY: [hospitals,] quality improvement, patient safety, health care, infection controls**~~

~~**Date of Enactment or Last Substantive Amendment: [March 15, 2010]2012**~~

~~**Authorizing, and Implemented or Interpreted Law: 26-1-30(2) [(a); 26-1-30(2)(b); 26-1-30(2)(d); 26-1-30(2)(e); 26-1-30(2)(g)]; 26-6-3; 26-6-7; 26-6-31**~~

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-1-5**  
Incorporations by Reference

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36871

FILED: 09/27/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference and to implement by rule both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider

Manual, and to implement by rule ongoing Medicaid policy for services described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List; Hospital Services Provider Manual; Speech-Language Services Provider Manual; Audiology Services Provider Manual; Hospice Care Provider Manual; Long Term Care Services in Nursing Facilities Provider Manual; Personal Care Provider Manual; Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual; Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Provider Manual; the Office of Inspector General Administrative Hearings Procedures Manual; and the Pharmacy Services Provider Manual.

**SUMMARY OF THE RULE OR CHANGE:** Section R414-1-5 is changed to update the incorporation of the State Plan by reference to 10/01/2012, which includes any approved State Plan Amendments (SPAs). SPAs that became effective during the third quarter of Calendar Year 2012 include SPA 11-014-UT, Pharmacy Services, which simplifies the over-the-counter prescribed drug list and incorporates an interim replacement for the average wholesale price of prescription drugs; SPA 12-002-UT, Reimbursement for Physician and Anesthesia Services, which updates the frequency of rebasing for physician and anesthesia services as well as clarifies the methodology for making supplemental payments for physicians employed by the University of Utah Medical Group. SPA 12-003-UT, Quality Improvement Incentive; which updates and continues quality incentive programs for nursing facilities and intermediate care facilities for persons with intellectual disabilities in future state fiscal years and makes other clarifications. SPA 12-004-UT, Medical Education Payments, which updates the direct graduate medical education payment pool for 2013 and rewords the payment amount and time period for the payment pool so the Department does not have to update it each year; SPA 12-006-UT, Federally Qualified Health Centers, which clarifies that a federally qualified health center must calculate only covered beneficiary charges when it calculates the ratio of beneficiary charges to total charges applied to allowable cost as part of its agreement with the federal government; SPA 12-007-UT, Dental Services, which provides limited emergency dental services to non-pregnant clients and to non-EPSTD clients; SPA 12-009-UT, Disproportionate Share Hospital Payments, which allows non-government hospitals that have the support of a government entity (e.g., special services district, county government) for the non-federal match dollars to participate in disproportionate share hospital payments; and SPA 12-012-UT, Reimbursement for Home Health Services, which changes the effective date of home health

rates from 07/01/2007 to 07/01/2012. This rule change also incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective 10/01/2012; incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective 10/01/2012; incorporates by reference the Speech-Language Services Provider Manual, effective 10/01/2012; incorporates by reference the Audiology Services Provider Manual, effective 10/01/2012; incorporates by reference the Hospice Care Provider Manual, effective 10/01/2012; incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective 10/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective 10/01/2012; incorporates by reference the Personal Care Provider Manual, with its attachments, effective 10/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective 10/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual, effective 10/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective 10/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective 10/01/2012; incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Provider Manual, effective 10/01/2012; the Office of Inspector General Administrative Hearings Procedures Manual, effective 10/01/2012; and the Pharmacy Services Provider Manual with its attachments, effective 10/01/2012.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012

- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Hospital Services Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Definitions and the Attachment for the Private Duty Nursing Acuity Grid in the Home Health Agencies Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Pharmacy Services Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Personal Care Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Hospice Care Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Speech-Language Services Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Audiology Services Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2012
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 10/01/2012
- ◆ Updates Utah Medicaid Provider Manual, Medical Supplies Manual and List, published by Division of Medicaid and Health Financing, 10/01/2012

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described

in the provider manuals does not create costs or savings to local governments.

◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to other persons or entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to a single Medicaid recipient or provider.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule should not have a direct fiscal impact on business. Incorporation of the State Plan by this rule assures that the Medicaid program is implemented through administrative rule.

**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 11/14/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012**

**AUTHORIZED BY: David Patton, PhD, Executive Director**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-1. Utah Medicaid Program.****R414-1-5. Incorporations by Reference.**

The Department incorporates the ~~July~~October 1, 2012 versions of the following by reference:

(1) ~~the~~Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program[-];

(2) ~~the~~Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, as applied in Rule R414-70;

(3) ~~the~~Hospital Services Provider Manual with its attachments;

(4) ~~both the and~~Definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual;

(5) ~~the~~Speech-Language Services Provider Manual;

(6) ~~the~~Audiology Services Provider Manual;

(7) ~~the~~Hospice Care Provider Manual;

(8) ~~the~~Long Term Care Services in Nursing Facilities Provider Manual with its attachments;

(9) ~~the~~Personal Care Provider Manual with its attachments;

(10) ~~the~~Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual;

(11) ~~the~~Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual;

(12) ~~the~~Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Provider Manual;

(13) ~~the~~Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual;

(14) ~~the~~Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual;

(15) ~~the~~Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Provider Manual;

(16) ~~the~~Office of Inspector General Administrative Hearings Procedures Manual; and

(17) ~~the~~Pharmacy Services Provider Manual with its attachments.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~August 10,~~2012

**Notice of Continuation:** March 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 26-34-2

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36872

FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify and update certain provisions within the rule.

**SUMMARY OF THE RULE OR CHANGE:** This amendment removes the list of different categories of Medicaid coverage groups and refers to these categories more generally. It also adds and updates definitions and certain provisions throughout the rule text.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Adds 42 CFR 431.301 through 42 CFR 431.307, published by Government Printing Office, 10/01/2011

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because these changes only clarify and update certain provisions within the rule.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither determine Medicaid eligibility nor fund Medicaid programs.

◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because these changes only clarify and update certain provisions within the rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid providers and to Medicaid recipients because these changes only clarify and update certain provisions within the rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Department does not anticipate any impact to a single Medicaid provider or to a Medicaid recipient because these changes only clarify and update certain provisions within the rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These changes should have no fiscal impact on providers. Updating and simplifying definitions and implementation standards may ease compliance costs.

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

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-301**  
Medicaid General Provisions

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 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

**R414-301. Medicaid General Provisions.**

**R414-301-1. Authority and Purpose.**

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish general provisions governing eligibility for medical assistance programs.

(3) The Department of Health may contract with the Department of Workforce Services and the Department of Human Services to do eligibility determinations for one or more [of the] medical assistance programs [listed below] authorized by the Department of Health. The Department of Health is responsible for the administration of [these] medical assistance programs [authorized under the Utah Medicaid State Plan, the State Plan for the Utah Children's Health Insurance Program and various waivers under Title XIX of the Social Security Act.

- [ (1) Aged Medicaid (AM);
- (2) Blind Medicaid (BM);
- (3) Disabled Medicaid (DM);
- (4) Family Medicaid (FM);
- (5) Child Medicaid (CM);
- (6) Title IV-E Foster Care Medicaid (FC);
- (7) Medicaid for Pregnant Women (PG);
- (8) Prenatal Medicaid (PN);
- (9) Newborn Medicaid (NB);
- (10) Transitional Medicaid (TR);
- (11) Refugee Medicaid (RM);
- (12) Utah Medical Assistance Program (UMAP);
- (13) Qualified Medicare Beneficiary Program (QMB);
- (14) Specified Low Income Medicare Beneficiary Program (SLMB);
- (15) Qualifying Individuals, Group 1 Program (QI-1);
- (16) Medicaid Work Incentive;
- (17) Medicaid Cancer Program;
- (18) Primary Care Network Demonstration, which includes the Primary Care Network and the Covered-at-Work Programs.
- ]

**R414-301-2. Definitions.**

The definitions in Section 26-18-2 apply in this rule. In addition, the following definitions apply in [R]ules R414-301 through R414-308:

(1) "Aged" means an individual who is 65 years of age or older.

(2) "Agency" means [any local office or outreach location of either] the Department of Health [or the Department of Workforce Services that accepts and processes applications for Medicaid and Medicare Cost-Sharing programs. In [as referenced in incorporated federal materials], "agency" means the Utah Department of Health].

(2) "Applicant" means any person requesting assistance under any of the programs listed in R414-301.

(3) "Assistance" means medical assistance under any of the programs listed in R414-301.

(4) "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.

(4) "Cost-of-care" means the amount of income after allowable deductions an individual must pay for their long-term care services either in a medical institution or for home and community-based waiver services.

(5) "Department" means the Department of Health.

(6) "Eligibility Agency" means any state office or outreach location of the Department of Workforce Services (DWS) that accepts and processes applications for medical assistance programs under contract with the Department. The Department of Human Services (DHS) is the eligibility agency under contract with the Department to process applications for children in state custody.

(7) "Federal poverty guideline" means the United States (U.S.) federal poverty measure issued annually by the Department and DHS to determine financial eligibility for certain means-tested federal programs.

(8) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301 that uses the Basic Maintenance Standard as the income limit for eligibility.

(5) "Client" means an applicant or recipient of any of the programs listed in R414-301.

(6) "Department" means the Department of Health.

(7) "Director" or "designee" means the director or designee of the Division of Health Care Financing.

(8) "Local" office means any community office location of the Department of Workforce Services, the Department of Human Services or the Department of Health where an individual may apply for medical assistance programs.

(9) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, homeless shelters, etc.

(10) "QI-1" means the Qualifying Individuals Group 1 program, a Medicare Cost-Sharing program.

(11) "QMB" means Qualified Medicare Beneficiary program, a Medicare Cost-Sharing program.

(12) "Recipient" means any individual receiving assistance under any of the programs listed in R414-301-1. It may

also be used to mean someone who is receiving other assistance or benefits such as SSI, in which case the text will specify such other type of benefit or assistance.

(1[3]2) "Reportable change" means any change in circumstances which could affect a client's eligibility for Medicaid, including:

- (a) change in the source of income;
- (b) change of more than \$25 in gross income;
- (c) changes in household size;
- (d) changes in residence;
- (e) gain of a vehicle;
- (f) change in resources;
- (g) change of more than \$25 in total allowable deductions;
- (h) changes in marital status, deprivation, or living arrangements;
- (i) pregnancy or termination of a pregnancy;
- (j) onset of a disabling condition; and
- (k) change in health insurance coverage including changes in the cost of coverage.

(1[4]3) "Resident of a medical institution" means a single [client]individual who is a resident of a medical institution from the month after entry into a medical institution until the month prior to discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the client's status as a resident of the medical institution. Married [clients]individuals are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(1[5]4) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare Cost-Sharing program.

(1[6]5) "Spendedown" means an amount of income in excess of the allowable income standard that must be paid in cash to the [department]eligibility agency or incurred through the medical services not paid by Medicaid or other health insurance coverage, or some combination of these.

(1[7]6) "Spouse" means any individual who has been married to an [client]applicant or recipient and has not legally terminated the marriage.

(17) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the applicable medical assistance program. Verification may include documents in paper format, electronic records from computer match systems, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(18) "Worker" means a state employee who determines eligibility for [Medicaid and Medicare Cost-Sharing]medical assistance programs.

#### **R414-301-3. Client Rights and Responsibilities.**

(1) Anyone may apply or reapply any time for any program. A program subject to periods of closed enrollment will deny applications received during a closed enrollment period.

(2) If someone needs help to apply he may have a friend or family member help, or he may request help from the [local office]eligibility agency or outreach staff.

(3) Workers will identify themselves to clients.

(4) Workers will treat clients[Clients will be treated] with courtesy, dignity and respect.

(5) Workers will ask for verification and information clearly and courteously. Workers shall send a written request for verifications.

(6) If a client must be visited after working hours, the eligibility worker will make an appointment.

(7) Workers will not enter a client's home without the client's permission.

(8) Clients must provide requested verifications within the time limits given. The [Department]eligibility agency may grant additional time to provide information and verifications upon client request.

(9) Clients have a right to be notified about the decision made on an application or other action taken that affects their eligibility for benefits in accordance with the requirements of 42 CFR 431.210, 42 CFR 431.211, 42 CFR 431.213, and 42 CFR 431.214.

(10) Clients may look at most information about their case.

(11) Anyone may look at the policy manuals located at any [department local office]eligibility agency office or online. Policy manuals are not available for review at outreach locations or call centers.

(12) Applicants and recipients may request a fair hearing if they disagree with the eligibility agency's decision.

(1[2]3) The [client]recipient must repay any understated liability. The [client]recipient is responsible for repayments due to ineligibility including benefits received pending a fair hearing decision. In addition to payments made directly to medical providers, benefits include Medicare or other health insurance premiums, premium payments made in the [client]recipient's behalf to Medicaid [H]health [P]plans and mental health providers even if the [client]recipient does not receive a direct medical service from these entities.

(1[3]4) The client must report a reportable change as defined in Subsection R414-301-2(1[2]1) to the [local office]eligibility agency within ten days of the day the change becomes known.

#### **R414-301-4. Safeguarding Information.**

(1) The [d]Department adopts 42 CFR 431[~~(F)~~]301 through 42 CFR 431.307, [2001]2011 ed., which is incorporated by reference. The [d]Department requires compliance with Section[s] 63G-2-101 through Section 63G-2-310.

(2) Workers shall safeguard all information about specific clients.

(3) There are no provisions for taxpayers to see any information from client records.

(4) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information released cannot include information obtained through an income match system.

#### **R414-301-5. Complaints and Agency Conferences.**

(1) A client may request an agency conference with the eligibility staff or supervisor at the [Medicaid]eligibility agency at any time to resolve a problem regarding the client's case. Requests shall be granted at the [Medicaid]eligibility agency's discretion.

Clients may have an authorized representative or a friend attend the agency conference.

(2) Requesting an agency conference does not prevent a client from also requesting a fair hearing in the event the agency conference does not resolve the client's concerns.

(3) Having an agency conference does not extend the time period in which a client has to request a fair hearing. The client must request a fair hearing according to the provisions in Section R414-301-6, to assure the right to a hearing.

(4) There is no appeal to the decisions made during an agency conference; however, if the client is not satisfied with the results of the agency conference, and makes a timely request for a fair hearing as defined in Section R414-301-6, the client may proceed with the fair hearing process.

(5) The ~~[Medicaid]~~eligibility agency shall provide[s] proper notice if the agency makes any additional adverse changes in the client's eligibility as a result of the agency conference. The client then has a right to request a fair hearing based on the new adverse action.

#### **R414-301-6. Hearings.**

(1) The ~~[Department]~~eligibility agency shall provide[s] a fair hearing process for applicants and ~~[clients]~~recipients in accordance with the requirements of 42 CFR 431.220 through 42 CFR 431.246. The ~~[Department]~~eligibility agency shall comply with Title 63G, Chapter 4.

(2) An applicant or ~~[client]~~recipient must request a hearing in writing or orally at the ~~[Medicaid]~~eligibility agency. The request must be made within 90 calendar days of the date of the notice of agency action with which the applicant or ~~[client]~~recipient disagrees. The request need only include a statement that the applicant or ~~[client]~~recipient wants to present his ~~[or her]~~case.

(3) Hearings are conducted only at the request of a client or spouse; a minor client's parent; or a guardian or representative of the client.

(4) A ~~[client]~~recipient who requests a fair hearing shall receive continued medical assistance benefits pending a hearing decision if the ~~[client]~~recipient requests a hearing before the effective date of the action or within ten calendar days of the mailing date of the notice of agency action.

(5) The ~~[client]~~recipient must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A ~~[client has the right to not accept]~~recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

(b) Benefits that the ~~[client]~~recipient must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The ~~[Medicaid]~~eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, then the ~~[Medicaid]~~eligibility agency must receive the request by the close of business on the first business day immediately following the due date.

(7) ~~[The Department of Workforce Services (DWS)]~~ conducts fair hearings for all medical assistance cases except those concerning eligibility for foster care or subsidized adoption Medicaid. The Department ~~[of Health (DOH)]~~conducts hearings for foster care or subsidized adoption Medicaid cases.

(8) DWS conducts informal, evidentiary hearings in accordance with Section[s] R986-100-124 through Section R986-100-134, except for the provisions in Subsection[s] ~~[R986-100-124(1) and ]~~R986-100-128(17) and Subsection R986-100-134(5). Instead, the provisions in Subsection R414-301-6(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-6 (17)(c) concerning continued assistance during a superior agency review conducted by the Department apply respectively. ~~[In addition, DWS complies with all the hearing requirements of Rule R986-100.]~~

(9) ~~[DOH]~~The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date ~~[DOH]~~the Department issues the hearing decision, the applicant or ~~[client]~~recipient may file a petition for judicial review with the district court.

(10) DWS ~~[shall]~~may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or ~~[client]~~recipient may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or ~~[client]~~recipient may have a friend or family member attend the hearing for assistance.

(12) The applicant, ~~[client]~~recipient or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the ~~[Medicaid]~~eligibility agency must attend the hearing. Other employees of the ~~[Medicaid]~~eligibility agency, other state agencies and legal representatives for the ~~[Medicaid]~~eligibility agency may attend as needed.

(14) The DWS ~~[Office]~~Division of Adjudication[s] and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request a superior agency review from ~~[DOH]~~the Department and how to make that request.

(b) The applicant or ~~[client]~~recipient may appeal the DWS decision to ~~[DOH]~~the Department pursuant to Section R410-14-1[7]8. The request for agency review must be made in writing and delivered to either DWS or the Department within 30 days of the mailing date of the decision.

(15) ~~[DOH]~~The Department, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. ~~[DOH]~~The Department conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless ~~[DOH]~~the Department conducts a superior agency review. ~~[DOH conducts a superior agency review when the applicant or client appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.]~~The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.

(17) The Department conducts a superior agency review when the applicant or recipient appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.

(a) [DOH]The Department notifies DWS whenever it conducts a superior agency review.

(b) The DWS hearing decision is suspended until [DOH]the Department issues a final decision and order on agency review.

(c) A recipient receiving continued benefits continues to be eligible for continued benefits pending the superior agency review decision.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A [DOH]Department decision and order on agency review becomes final upon issuance.

(20) The [Medicaid]-eligibility agency takes case action within ten calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or [client]recipient may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to [DOH]the Department negates this right to a judicial appeal.

(22) [Clients]Recipients are not entitled to continued benefits pending judicial review by the district court.

**KEY: client rights, hearings, Medicaid**

**Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~2012**

**Notice of Continuation: January 31, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-18**

## Health, Family Health and Preparedness, Licensing **R432-35** Background Screening

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 36879

FILED: 09/28/2012

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A federal grant was obtained for the Bureau to develop and implement a new background screening process for health care facility employees. The department was required to enact new legislation to implement the conditions of the grant. The current background screening rule did not meet the federal requirements of the new process, so changes were made to implement the new process. The new process will better protect the vulnerable citizens of Utah that reside in or receive services from health care facilities/agencies.

SUMMARY OF THE RULE OR CHANGE: Changes to the rule include: a clearance will now be issued for the employee and is no longer attached to just one facility. In the past a clearance was required for each facility or agency that the employee worked for. The new screening process includes a wrap-back system that will automatically notify the department if a new arrest or conviction happens instead of waiting for a two-year renewal check. In the current system, only direct care staff are screened for background issues. The new rule requires that all employees that have direct patient access be screened, which includes employees that have access to patient medical and financial records. All employees requiring a clearance will be required to submit fingerprints to check against the federal data base. Previously, fingerprints had been required only for people who had lived outside of Utah in the past five years. Several new non-criminal records systems will be checked before clearance is issued, such as Occupational and Professional Licensing and the Federal Office of the Inspector General list of excluded individuals. Rule changes were developed with input from major provider associations, including Utah Health Care, Utah Home Care and the Utah Assisted Living associations.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The federal grant money will be utilized to get the new process developed and implemented. After that the fees from the providers will be used to maintain the system and data base. There will be no fiscal impact for state government.

♦ LOCAL GOVERNMENTS: This rule change will have no fiscal impact on local governments because they do not do background screening.

♦ SMALL BUSINESSES: There will be an up-front cost to get all health employees fingerprinted during the first facility renewal. This cost has been subsidized by 42% using federal grant monies. With this subsidy, the change is estimated to be approximately \$68,000 to small health care businesses in the next 2 years. There are approximately 100 small businesses affected. However, the amendment will decrease the long-term costs to the small businesses by stopping duplication of efforts for background screening. Once employees are cleared, they will not be required to resubmit finger prints. Many new hires will have been cleared already by other facilities so no new fees will be required upon hire of those cleared employees. The ongoing costs are estimated to be neutral.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be an up-front cost to get all health employees fingerprinted during the first facility renewal. This cost has been subsidized by 42% using federal grant monies. With this subsidy, the change is estimated to be approximately \$425,000 to health care businesses in the next 2 years. There are approximately 380 health care businesses affected.

However, the amendment will decrease the long-term costs by stopping duplication of efforts for background screening. Once employees are cleared, they will not be required to resubmit finger prints. Many new hires will have been cleared already by other facilities so no new fees will be required upon hire of those cleared employees. The ongoing costs are estimated to be neutral.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some health care businesses may pass the initial cost of the rule requirement for fingerprints on to the employees. Individuals that get hired as new health care employees may have an increase of cost for fingerprinting for the first time, of \$36.50. However, this rule amendment will decrease the long-term costs to the affected persons by not requiring duplication of background screening processes with job changes. Once an individual is cleared, they will not be required to resubmit finger prints.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This new background screening process will better protect vulnerable residents. The one-time cost to business to obtain fingerprints on all employees will have a cost, but impacted providers have been involved in the development. Any negative comments will be carefully evaluated to minimize unnecessary regulatory burden.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
LICENSING  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov  
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.**

~~[R432-35. Background Screening.~~

~~**R432-35-1. Authority.**~~

~~(1) The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult licensing information system~~

~~screening be conducted on each person who provides direct care to a patient for the following covered health care agencies and facilities:~~

- ~~(a) Home health care agencies;~~
- ~~(b) Personal Care agencies~~
- ~~(c) Hospice agencies;~~
- ~~(d) Nursing Care facilities;~~
- ~~(e) Assisted Living facilities;~~
- ~~(f) Small Health Care facilities; and~~
- ~~(g) End Stage Renal Disease Facilities.~~

~~**R432-35-2. Purpose.**~~

~~The purpose of this rule is to define the circumstances under which a person who has been convicted of or charged with a eriminal offense or who has a juvenile court substantiated or DHS-supported finding report of severe child abuse or neglect or DHS-substantiated finding of disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.~~

~~**R432-35-3. Definitions.**~~

~~Terms used in this rule are defined in Title 26, Chapter 21. In addition:~~

- ~~(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, persons contracted to perform direct care and, for residential settings, all individuals residing in the home where an assisted living or small health care program is to be licensed, who are 18 years old and over.~~
- ~~(2) "Department" means the Utah Department of Health.~~
- ~~(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of elder or disabled adult abuse or neglect has occurred:~~
  - ~~(a) physical abuse;~~
  - ~~(b) sexual abuse;~~
  - ~~(c) sexual exploitation;~~
  - ~~(d) abandonment;~~
  - ~~(e) medical neglect resulting in death, disability, or serious illness;~~
  - ~~(f) chronic or severe neglect; or~~
  - ~~(g) financial exploitation.~~
- ~~(4) "Supported" means a DHS finding, at the completion of an investigation that there is a reasonable basis to conclude that one or more of the following types of severe abuse or neglect has occurred to a child:~~
  - ~~(a) severe or chronic physical abuse;~~
  - ~~(b) sexual abuse;~~
  - ~~(c) sexual exploitation;~~
  - ~~(d) abandonment;~~
  - ~~(e) medical neglect resulting in death, disability, or serious illness; or~~
  - ~~(f) chronic or severe emotional abuse.~~
- ~~(5) "Unsupervised Contact" means contact with residents or patients that provides the unsupervised person opportunity and probability for personal communication or touch or for access to~~

personal funds and property when not under the direct supervision of a health care provider or employee.

(6) "Volunteer" means an individual who is not directly compensated for providing care, including family members of patients or residents enrolled in the program, whose duties assigned by a health care provider or employee include unsupervised contact in a health care facility on a regularly scheduled basis of one or more times per month.

**R432-35-4. Bureau of Criminal Identification.**

(1) The Utah Code, Section 26-21-9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility:

(a) The health care facility shall submit applicant information within ten days of initially hiring an individual, include fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor the Department shall review the criminal convictions to determine whether to approve the covered individual for licensing or employment.

(c) If a covered individual applicant has not had residency in Utah for the last five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(2) The Department shall review any criminal convictions, consistent with R432-35, to determine if action should be taken to protect the health and safety of patients and residents receiving health care services in the covered health care facility.

(3) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a Notice of Agency Action to the health care provider and the covered individual explaining the action and the right of appeal.

**R432-35-5. Exclusion from Direct Patient Care Due to Criminal Convictions or Pending Charges.**

(1) As required by Utah Code Ann. Subsection 26-21-9.5(6), if a covered individual has been convicted of a felony or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide direct patient care or volunteer. If such a covered individual resides in a home where health care is provided, the Department may revoke an existing license or and refuse to permit health care services in the home until the Department is reasonably convinced that the covered individual no longer resides in the home or that the individual will not have unsupervised contact with any child or disabled or elderly adult in care at the home.

(2) As allowed by Utah Code Ann. Subsection 26-21-9.5(6), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing direct patient care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director may exclude, on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child or disabled adult. The following factors will be used in deciding under what circumstance, if any, the covered individual will be allowed to provide direct patient care or to volunteer in a covered health care facility:

(a) Types and number of offenses;

(b) Passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;

(c) Circumstances surrounding the commission of the offense;

(d) Intervening circumstances since the commission of the offense; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children and disabled and elderly adults.

(4) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the Department denies a covered individual a license or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All covered health care facilities must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours of discovery.

**R432-35-6. Licensing Information System.**

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect of a disabled or elder adult or a supported finding of severe abuse or neglect of a child, from the licensing information system maintained by the Utah Department of Human Services (DHS).

(2) If a covered individual appears on the licensing information system, the Department shall review the date of the supported or substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

~~(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.~~

~~(4) If the Department denies or revokes a license or employment based upon the licensing information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.~~

~~(5) If the covered individual disagrees with the record of substantiation of elder or disabled adult abuse or supported finding of severe child abuse or neglect, he must pursue an appeal with the DHS or the juvenile court. If the covered individual agrees with the substantiated or supported finding of abuse or neglect that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.~~

~~(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children or disabled or elder adults being served in the licensed health care facility.~~

~~(b) If a covered individual appeals the record of substantiation or supported finding, the Department may hold the license or employment denial in abeyance until DHS or the juvenile court renders a decision.~~

~~(6) If the DHS determines a covered individual has a substantiated or supported finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.~~

~~**R432-35-7. Covered Individuals with Arrests or Pending Criminal Charges.**~~

~~(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R432-5(2), the Department may act to protect the health and safety of patients and residents in covered health care facilities that the individual may have contact with. The Department may revoke or suspend any license or employment if necessary to protect the health and safety of patients and residents in care.~~

~~(2) Upon request, the Department may permit the covered individual to be employed under supervision until the felony or misdemeanor charge is resolved, if the facility can demonstrate that the individual can work without posing a threat to the safety and health of the resident or patient being served in the licensed health care facility.~~

~~(3) If the Department denies or revokes a license, or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a Notice of Agency Action to the licensee and the covered individual notifying them that they may request a hearing with the Department.~~

~~(4) The Department may hold the license or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.~~

~~**R432-35-8. Penalties.**~~

~~The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:~~

~~(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of \$50 to \$1,000 per day; and~~

~~(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of \$1,050 to \$10,000 per day.]~~

~~**R432-35. Background Screening -- Health Facilities.**~~

~~**R432-35-1. Authority.**~~

~~This rule is adopted pursuant to Title 26 Chapter 21 Part 2.~~

~~**R432-35-2. Purpose.**~~

~~To outline the process required for individuals to be cleared to have direct patient access while employed by a covered provider, covered contractor or covered employer.~~

~~**R432-35-3. Definitions.**~~

~~Terms used in this rule are defined in Title 26, Chapter 21 Part 2.~~

~~In addition:~~

~~(1) "Aged" means an individual who is 60 years of age or older.~~

~~(2) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.~~

~~(3) "Covered body" means a covered provider, covered contractor, or covered employer.~~

~~(4) "Corporation" means a corporation that has business interest/connection to covered providers that employ individuals who provide consultative services which may result in direct patient access.~~

~~(5) "Covered contractor" means a person or corporation that supplies covered individuals, by contract, to:~~

~~(a) a covered employer, or~~

~~(b) a covered provider for services within the scope of the health facility license.~~

~~(6) "Covered employer" means an individual who:~~

~~(a) engages a covered individual to provide services in a private residence to:~~

~~(i) an aged individual, as defined by department rule; or~~

~~(ii) a disabled individual, as defined by department rule;~~

~~(b) is not a covered provider; and~~

~~(c) is not a licensed health care facility within the state.~~

~~(7) "Covered individual":~~

~~(a) means an individual:~~

~~(i) whom a covered body engages; and~~

~~(ii) who may have direct patient access;~~

~~(b) which may include:~~

~~(i) a nursing assistant;~~

~~(ii) a personal care aide;~~

~~(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;~~

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(9) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

(10) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(11) "Engage" means to obtain one's services:

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(12) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(13) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, which may include a nurse aide, personal care aide or certified nurse aide.

(14) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

(15) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

(d) a hospice that provides living quarters as part of its services.

(16) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(17) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:

(a) Clergy;

(b) Religious groups;

(c) Entertainment groups;

(d) Resident family members;

(e) Patient family members; and

(f) Individuals volunteering services for 20 hours per month or less.

#### **R432-35-4. Covered Provider - Direct Access Clearance System Process.**

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered provider enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to issuance of a provisional license, license renewal or engagement as a covered individual.

(2) The covered provider must ensure that the engaged covered individual:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of engagement.

(3) The covered provider must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) A covered provider may provisionally engage a covered individual while direct patient access clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered provider and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) A covered provider that provides services in a residential setting must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for all individuals 12 years of age and older, who are not residents, and reside in the residential setting. If the individual is not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(8) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a

covered provider, are required to submit fingerprints within 15 working days of their 18th birthday.

(9) Covered providers requesting to renew a license as a health care facility must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for each covered individual.

(10) Individuals or covered individuals requesting to be licensed as a covered provider must submit required information to the Department to initiate and obtain a clearance prior to the issuance of the provisional license. If the individuals are not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure as a health care facility.

**R432-35-5. Covered Contractor - Direct Access Clearance System Process.**

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered contractor enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to being supplied by contract to a covered provider.

(2) A covered contractor must ensure that the covered individual, being supplied by contract to a covered provider:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of placement or termination.

(4) A covered contractor may provisionally supply a covered individual to a covered provider while clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered contractor and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered contractor, are required to submit fingerprints within 15 working days of their 18th birthday.

**R432-35-6. Covered Employer - Direct Access Clearance System Process.**

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered employer be allowed to enter required information into the Direct Access Clearance System to initiate and obtain a clearance for a covered individual.

(2) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered employer and the individual explaining the action and the individual's right of appeal as defined in R432-30.

**R432-35-7. Sources for Background Review.**

(1) As required in Utah Code 26-21-204 the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the Department determines an individual is not eligible for direct patient access based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(3) If the Department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

**R432-35-8. Exclusion from Direct Patient Access.**

(1) Criminal Convictions or Pending Charges

(a) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, they may not have direct patient access:

(i) any felony or class A conviction under Utah Criminal Code.

(ii) any felony or class A, B or C conviction under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(iii) any felony or class A conviction under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(iv) any felony or class A conviction under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(v) any felony or class A conviction under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(vi) any felony or class A conviction under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code;

(vii) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-9-301.8, Bestiality;

(B) 76-9-702, Lewdness - Sexual Battery - Public urination; and

(C) 76-9-702.5, Lewdness Involving Child.

(viii) any felony or class A conviction under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(ix) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(B) 76-10-1301 to 1314, Prostitution;

(x) any felony or class A conviction under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(b) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has a warrant for arrest or an arrest for any of the identified offenses in R432-35-8(1)(a), the department may deny clearance based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(c) The following factors may be considered in determining under what circumstance, if any, the covered individual will be allowed direct patient access in a covered provider:

(i) types and number of offenses;

(ii) passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;

(iii) circumstances surrounding the commission of the offense; and

(iv) intervening circumstances since the commission of the offense. The Executive Director may exclude, on a case-by-case basis, misdemeanors listed under paragraph (a) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child or disabled adult.

(d) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and may deny clearance based on that evidence.

(2) Juvenile Records

(a) As required by Utah Code Subsection 26-21-204(4)(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28.

(ii) over the age of 28, and has convictions or pending charges identified in R432-35-8(1)(a).

(b) Adjudications by a juvenile court may exclude the individual from direct patient access if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

(3) Non-Criminal Records

(a) As required by Utah Code Subsection 26-21-204(3), the Department may review findings from the following sources to

determine whether an individual or covered individual should be granted or retain direct patient access:

(i) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(ii) child abuse or neglect findings described in Section 78A-6-323;

(iii) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(iv) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(v) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(vi) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

#### **R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.**

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under R432-35-8(1), the Department may act to protect the health and safety of patients or residents in covered providers.

(2) The Department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the Department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the Department shall send a Notice of Agency Action to the covered provider and the covered individual notifying them of the right to appeal in accordance with R432-30.

#### **R432-35-10. Penalties.**

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of \$50 to \$1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of \$1,050 to \$10,000 per day.

#### **KEY: health care facilities, background screening**

**Date of Enactment or Last Substantive Amendment: [~~October 1, 2011~~]2012**

**Notice of Continuation: May 27, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-21-9.5**

**Housing Corporation (Utah),  
Administration  
R460-2  
Definitions of Terms Used Throughout  
R460**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36782

FILED: 09/17/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the amendment is to eliminate obsolete references or definitions and to provide additional clarity to the definitions listed in this rule. Furthermore, one definition is expanded to reflect changes enacted by the Americans with Disabilities Act of 1990, 42 USC 12102, as amended.

SUMMARY OF THE RULE OR CHANGE: Section R460-2-2 changes include: 1) update reference to the Utah Code to coincide with changes made in the 2012 General Session; 2) add language to the definition of "major life activities" as required by the Americans with Disabilities Act of 1990, 42 USC 12102, as amended; 3) clarify appropriate contacts and eliminate obsolete definitions; and 4) add clarifying language to certain definitions to reflect all parties who may be affected by Utah Housing Corporation's (UHC) rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-711

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because Subsection 35A-8-702(3)(b) states the UHC is a "financially independent body" and therefore, receives no state appropriation. Furthermore, the changes made to this rule are merely clarifying in nature and do not entail any additional requirements.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to any local government because changes made to this rule are simply clarifying in nature.

◆ **SMALL BUSINESSES:** There is no cost or savings to any small businesses because the changes made to this rule are merely clarifying in nature.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to other persons because the changes made to this rule are merely clarifying in nature.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated additional compliance costs (in addition to existing compliance costs) for persons affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no demonstrable savings or expenditures on business from this rule. However, the greater clarity which has been added will enable UHC and its stakeholders to more easily articulate the defined terms as laid out in this rule.

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

HOUSING CORPORATION (UTAH)

ADMINISTRATION

2479 LAKE PARK BLVD

WEST VALLEY CITY, UT 84120

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at [jhanks@uthc.org](mailto:jhanks@uthc.org)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Grant Whitaker, President and CEO

**R460. Housing Corporation, Administration.**

**R460-2. Definitions of Terms Used Throughout R460.**

**R460-2-1. Terms Which are Defined in Section ~~[9-4-903]~~35A-8-703.**

- (1) Bonds;
- (2) Corporation;
- (3) Financial assistance;
- (4) Housing sponsor;
- (5) Low and moderate income persons;
- (6) Mortgage lender;
- (7) Mortgage loan;
- (8) Mortgage;
- (9) President;
- (10) Residential housing;
- (11) State.

**R460-2-2. Additional Defined Terms.**

(1) "Act" means the Utah Housing Corporation Act, set forth in Section ~~[9-4-901]~~35A-8-701 et. seq.~~[through 9-4-926]~~.

(2) "ADA coordinator" means UHC's ~~coordinator~~ president or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

~~[(3) "ADA state coordinating committee" means the committee with that title appointed by the Utah Governor.]~~

([4]3) "Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

([5]4) "Complainant" means a person who has a disability and who alleges in a complaint filed with UHC according to this rule, that an act of discrimination occurred by UHC, and satisfies one or more of the following:

(a) who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by UHC;

(b) who would otherwise be an eligible applicant for vacant UHC employment positions;

(c) who is an employee of UHC.

([6]5) "Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

([7]6) "Federal" means of, pertaining to, or designating the government of the United States of America.

([8]7) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, sleeping, standing, sitting, reaching, lifting, bending, reading, concentrating, thinking, communicating, interacting with others, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

([9]8) "Multifamily" means a residential housing project consisting of five or more rental dwelling units located on a single or multiple tract(s) of land.

([10]9) "Participant" means a person, natural or otherwise, who is involved in or has a critical influence on or substantive control over a transaction which involves a UHC program, including but not limited to any of the following:

- (a) appraisers and inspectors;
- (b) real estate agents and brokers;
- (c) management and marketing agents;
- (d) attorneys;
- (e) title insurance companies;
- (f) escrow and closing agents;
- (g) loan officers or other agents of lenders;

(h[~~g~~]) project owners;

(i[~~h~~]) developers, builders and contractors involved in the construction or rehabilitation of properties financed by UHC, or receiving UHC funds, or allocations of Federal or State resources directly or indirectly;

(i[~~i~~]) individuals who are applicants for or borrowers under UHC mortgage loans, or members of their families;

(j[~~k~~]) employees or agents of any of the above.

[~~11~~] "~~Service~~" means ~~a mortgage lender who collects and accounts for monthly mortgage loan payments from borrowers and performs other related services on behalf of UHC.~~

[10[2]] "Single-Family" means residential housing consisting of one dwelling unit occupied by the fee simple owner of the dwelling unit.

(1[3]1) "UHC" means Utah Housing Corporation.

**KEY: housing finance**

**Date of Enactment or Last Substantive Amendment:**  
**[1993]2012**

**Notice of Continuation: October 15, 2007**

**Authorizing, and Implemented or Interpreted Law: [9-4-910; 9-4-911]35A-8-711**

## Housing Corporation (Utah), Administration **R460-4** Additional Servicing Rules

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36781

FILED: 09/17/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose for the amendment to this rule is to eliminate obsolete practices of Utah Housing Corporation (UHC).

**SUMMARY OF THE RULE OR CHANGE:** Section R460-4-1 is being eliminated (and subsequently reserved for later use) reflecting the fact that UHC services 100% of mortgage loans it purchases and does not contract with any other entity to service its mortgage loans. Section R460-4-2 is being eliminated in its entirety reflecting the fact that UHC services 100% of mortgage loans it purchases and does not contract with any other entity to service its mortgage loans.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 35A-8-711(1) and Subsection 35A-8-712(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because Subsection 35A-8-702(3)(b) states that UHC is a "financially independent body" and therefore, receives no state appropriation. Furthermore, the changes made to this rule are merely clarifying in nature and do not entail any additional requirements.

◆ **LOCAL GOVERNMENTS:** There is no cost or savings to any local government because changes made to this rule are merely eliminating obsolete practices.

◆ **SMALL BUSINESSES:** There is no cost or savings to any small businesses because the changes made to this rule are merely eliminating obsolete practices.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to any person because the changes made to this rule are merely eliminating obsolete practices.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated additional compliance costs (in addition to existing compliance costs) for persons affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses from the implementation of the changes to this rule. The changes simply eliminate business practices in which UHC has not been involved for a number of years.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HOUSING CORPORATION (UTAH)  
ADMINISTRATION  
2479 LAKE PARK BLVD  
WEST VALLEY CITY, UT 84120  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at [jhanks@uthc.org](mailto:jhanks@uthc.org)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Grant Whitaker, President and CEO

**R460. Housing Corporation, Administration.**  
**R460-4. Additional Servicing Rules (Reserved).**  
**R460-4-1. [~~Transfers of Servicing~~Reserved].**

~~Reserved. [UHC may establish criteria relating to the transfer of mortgage loan servicing from one servicer to another eligible servicer to ensure that acceptable levels of servicing performance will be achieved and to preserve UHC's rights with respect to the transferor mortgage lender and servicer. UHC may require that the transferor servicer and transferee servicer enter into a written agreement with UHC with respect to the transfer and the obligations of the parties.~~

**R460-4-2. Default Servicers.**

~~UHC may contract with eligible servicers to assume the servicing obligations of another servicer upon the termination of the latter servicer's eligibility to service mortgage loans. The default servicing contracts may be on terms as UHC deems necessary to ensure the efficient collection of and preservation of the value of mortgage loans which are the subject of the servicing.]~~

**KEY: housing finance**

**Date of Enactment or Last Substantive Amendment:**  
~~[1999]~~2012

**Notice of Continuation: October 15, 2007**

**Authorizing, and Implemented or Interpreted Law:** ~~[9-4-910; 9-4-911]~~35A-8-711; 35A-8-712

Housing Corporation (Utah),  
Administration  
**R460-5**  
Termination of Eligibility to Participate  
in Programs

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 36783  
FILED: 09/17/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the amendment is to eliminate obsolete practices and/or references and to add clarifying language to more clearly describe the process for suspending or terminating the eligibility of entities with whom Utah Housing Corporation (UHC) conducts business as well as associated timeframes.

SUMMARY OF THE RULE OR CHANGE: Section R460-5-1 changes include the elimination of Subsection R460-5-1(3) which required a lender to maintain itself as an eligible servicer. This reflects that UHC services 100% of the loans it funds and currently does not use any external entities to service its mortgage loans. Section R460-5-2 is stricken in its entirety and reserved for future use because UHC services 100% of its loans, eliminating the need for any third-party entity to act as a Servicer on UHC's behalf. Section R460-5-3 changes include: 1) elimination of a reference to an "interest rate buydown," a product which UHC no longer offers; 2) addition of language to clarify that a participant considered "not in good standing" (as defined in UHC's annually updated Qualified Allocation Plan - not a part of the Administrative Rules) may have its eligibility to participate terminated for such standing; 3) minor wording clarifications; 4) addition of language to allow the president of UHC to designate other UHC officers to suspend a participant for causes laid out in this rule; 5) addition of language expanding suspension notifications to be made by certified mail, as well as by electronic means; 6) elimination of a requirement for UHC to distribute a list of persons or entities whose ability to participate in UHC programs has been terminated or suspended. Because of the time-consuming nature of maintaining a database with all potentially interested parties due to constantly changing email addresses, etc., the list will continue to be compiled and maintained and will be provided upon request. Also changed the Authorizing, and Implemented or Interpreted Law reference to reflect changes made in the 2012 Utah General Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-8-711(1) and Subsection 35A-8-712(4)

## ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because Subsection 35A-8-702(3)(b) states that UHC is a "financially independent body" and therefore, receives no state appropriation. Furthermore, the changes made to this rule are merely clarifying in nature and do not entail any additional requirements.
- ◆ LOCAL GOVERNMENTS: There is no cost or savings to any local government because the changes made to this rule are merely clarifying in nature. However, if a local government is suspended as a participant in a UHC program, it may forgo business opportunities with UHC programs had the local government unit maintained itself as eligible under UHC guidelines. This aspect is not changed with this amendment.
- ◆ SMALL BUSINESSES: There is no direct cost or savings to any small businesses because the changes made to this rule are mainly clarifying in nature. While clarifying in nature, the fact that a small business no longer must maintain itself as an "eligible servicer" may allow additional small businesses to participate in UHC programs. Any fees that accrue to a participant in UHC programs as a result of being suspended and/or terminated are clearly detailed in program documents and have been for many years.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no cost or savings to other persons because the changes made to this rule are mainly clarifying in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated additional compliance costs (in addition to existing compliance costs) for persons affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule are not expected to have any fiscal impact on businesses. Although it is anticipated there will be no fiscal impact, it is expected that the clarification of the rule and elimination of old requirements may enable additional businesses to participate in UHC programs.

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

HOUSING CORPORATION (UTAH)  
ADMINISTRATION  
2479 LAKE PARK BLVD  
WEST VALLEY CITY, UT 84120  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at [jhanks@uthc.org](mailto:jhanks@uthc.org)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Grant Whitaker, President and CEO

**R460. Housing Corporation, Administration.****R460-5. Termination of Eligibility to Participate in Programs.****R460-5-1. Mortgage Lenders.**

UHC may terminate the eligibility of a mortgage lender to participate in UHC's programs if UHC finds that a mortgage lender:

(1) has failed to comply with the provisions of the ~~[act]~~Act or the rules, guidelines, policies or procedures adopted thereunder;

(2) has failed to perform any one or more of its obligations arising under any contractual agreement with UHC;

~~[(3) has failed to qualify and maintain itself as an eligible servicer as defined in the agreements between the servicer and UHC or has assigned the servicing of mortgage loans without the prior written consent of UHC;~~

~~]~~ ~~[(4)]~~3 has commenced a voluntary case under any chapter of the Federal Bankruptcy Code, or has consented to, or has failed to controvert in a timely manner, the commencement of an involuntary case against the mortgage lender under such code, or has initiated or suffered any proceeding of insolvency under any other federal or state receivership law, or made any common law assignment for the benefit of creditors or written admission of its inability to pay debts generally as they become due;

~~[(5)]~~4 has failed to comply with any state or federal regulatory requirement relating to the mortgage lender's financial condition or operating performance;

~~[(6)]~~5 has suffered the appointment, by decree or order of a court, agency or supervisory authority having jurisdiction in the premises, of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties, or for the termination or liquidation of its affairs;

~~[(7)]~~6 has consented to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties.

**R460-5-2. Servicers (Reserved).**

~~[UHC may terminate the eligibility of a servicer to participate in UHC's programs and order the servicer to transfer its servicing rights to another eligible servicer if UHC finds that a servicer:~~

~~\_\_\_\_\_ (1) has failed to comply with the provisions of the act or the rules, guidelines, policies or procedures adopted thereunder;~~

~~\_\_\_\_\_ (2) has failed to perform any one or more of its obligations arising under any contractual agreement with UHC;~~

~~\_\_\_\_\_ (3) has commenced a voluntary case under any chapter of the Federal Bankruptcy Code, or has consented to, or has failed to controvert in a timely manner, the commencement of an involuntary case against the servicer under such code, or has initiated or suffered any proceedings of insolvency or reorganization under any other federal or state receivership law, or made any common law assignment for the benefit of creditors or written admission of its inability to pay debts generally as they become due;~~

~~\_\_\_\_\_ (4) has failed to comply with any state or federal regulatory requirement relating to its financial condition or operating performance;~~

~~(5) has suffered the appointment, by decree or order of a court, agency or supervisory authority having jurisdiction in the premises, of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the servicer or substantially all of its properties, or for the termination or liquidation of its affairs;~~

~~(6) has consented to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the servicer or substantially all of its properties.]Reserved.~~

### **R460-5-3. Other Participants.**

(1) UHC may terminate the eligibility of a participant to participate in UHC's programs if UHC finds that a participant:

(a) has made or procured to be made any false statement for the purpose of influencing in any way an action of UHC or any other participant;

(b) has falsely advertised, made misleading or false offers, or otherwise attempted to induce persons to participate in ~~[agency]UHC~~ programs when program requirements cannot be met or have not been represented accurately;

(c) has represented, either orally or in writing or advertising, that ~~[agency]UHC~~ mortgage loans are available at a specified interest rate when such participant either knew or reasonably should have known that UHC mortgage loans are not available at such rate~~[-or are available only with the financial assistance of such participant, for example an interest rate buy-down];~~

(d) has provided funds, whether by gift or by loan, to unqualified borrowers to enable such borrowers to obtain a mortgage loan or other benefits of a UHC program;

(e) has violated a law, regulation or procedure relating to an application for a mortgage loan or other benefits of a UHC program or relating to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(f) has been debarred or suspended or issued a limited denial of participation from a federal housing program;

(g) has been convicted of or held liable in a civil judgment for any of the following:

(i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(ii) forgery, falsification or destruction of records, making false statements, making false claims, or obstruction of justice;

(iii) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person~~[-];~~

~~(h) has been determined to be "not in good standing" as detailed in the current-year Qualified Allocation Plan utilized by UHC and its development partners for the housing credit and multifamily bond programs.~~

(2) For purposes of determining the scope of a participant's ineligibility to participate in UHC programs, conduct may be imputed as follows:

(a) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, employee, partner, joint venturer or other individual associated with a participant may be imputed to the participant when the conduct occurred in

connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, employee, partner, joint venturer or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) The eligibility of an affiliate or organizational element of a participant may be terminated solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the action. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party, or by an entity that itself is controlled by the primary sanctioned party, is on the affiliate or organizational element.

(4) Ineligibility shall be for a period commensurate with the seriousness of the cause. Ineligibility generally should not exceed three years. Where circumstances warrant, a longer period of ineligibility may be imposed. If a suspension precedes a determination of ineligibility, the length of the suspension period shall be considered in determining the length of the ineligibility period.

(5) The president or other designated officer of UHC may suspend a participant for any of the causes set forth in R460-5-1 or R460-5-3(1)[3-] which shall immediately exclude a participant from participating in transactions involving UHC programs for a temporary period not to exceed 12 months.

(a) Suspension is a serious action to be imposed only when there exists adequate evidence of one or more of the causes set out in R460-5-1 or R460-5-3(1)[3-] and immediate action is necessary to protect the public interest.

(b) In assessing the adequacy of the evidence, the president of UHC shall consider how much information is available, the credibility of the evidence given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably~~[e] b[y]e~~ drawn as a result of all available evidence.

(c) All suspensions shall be for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue but in any event shall be for no longer than 12 months.

(d) Suspension shall be made effective by advising the participant, and any specifically named affiliates, electronically via email or facsimile and by certified mail, return receipt requested, of each of the following:

(i) ~~[that]~~suspension is being imposed;

(ii) ~~[of]~~the cause relied upon under R460-5-1 or R460-5-3(1)[R460-5-3-] for imposing suspension;

(iii) ~~[that]~~the suspension is for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue~~[-]~~ and

(iv) ~~[of]~~the right to request within 30 days, in writing, a hearing, either oral or on the basis of any written submissions by the respondent.

(e) Within 30 days of receipt of a notice of suspension, a suspended participant, including any affiliate, desiring a hearing

shall file a written request for a hearing with UHC. If a hearing is requested, it shall be held in accordance with R460-6-3.3.

(6) UHC shall compile ~~and~~[-]maintain[-] ~~and distribute~~ a list of all persons or entities whose eligibility to participate in UHC's programs has been terminated or suspended. The list shall include the following items:

(a) the names and addresses of all ineligible and suspended persons or entities[-] ~~in alphabetical order, with cross-references when more than one name is involved in a single action~~;

(b) the type of action;

(c) the cause for the action;

(d) the scope of the action;

(e) any termination date for each listing;

(f) the name and telephone number of UHC point of contact for the action.

(7) Before resorting to adjudicative proceedings under R460-6, UHC may issue a cease and desist order, advising a participant of present actions by the participant that violate this rule, and ordering the participant to cease and desist such actions, subject to further sanctions.

(8) UHC may also refer a case involving a participant to the Utah Department of Commerce, or any other [city,-]state or federal agency, for further action.

(9) UHC may settle a case at any time.

(10) UHC and a participant may agree to a voluntary exclusion of a participant from a specific program or project.

**KEY: housing finance**

**Date of Enactment or Last Substantive Amendment:** ~~[1993]~~2012

**Notice of Continuation: October 15, 2007**

**Authorizing, and Implemented or Interpreted Law:** ~~[9-4-910; 9-4-911]~~35A-8-711; 35A-8-712

**Housing Corporation (Utah),  
Administration  
R460-8  
Americans with Disabilities Act  
Complaint Procedures**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 36784  
FILED: 09/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose for the amendment is to add language to the rule that takes into account changes promulgated in recent Americans with Disabilities Act Amendment Act regulations, particularly an expansion in the definition of a qualified individual. The amendment also clarifies who is the Utah Housing Corporation (UHC) ADA coordinator and reduces timeframes in which UHC will respond to complainants.

**SUMMARY OF THE RULE OR CHANGE:** Section R460-8-1 adds minor wording clarifications. Section R460-8-2 changes include: 1) adding language pursuant to the Americans with Disabilities Act Amendments Act (ADAAA) defining and clarifying what individuals may file a complaint with UHC alleging noncompliance with Title II of the ADAAA; 2) adding language to clarify that the president of UHC or his designee acts as the agency's ADA coordinator. Section R460-8-3 eliminates a reference to the ADA state coordinating committee, a committee that no longer exists. Section R460-8-4 reduces the time frame from 45 to 30 days in which UHC's ADA coordinator will respond to a complaint. Section R460-8-5 changes include: 1) clarification that the president or his designee may consult with legal counsel and/or the human resource department when considering an appeal of a decision by UHC's ADA coordinator; and 2) reducing from 45 to 30 days the time which the president or his designee has to provide a decision or reasoning why a decision has not yet been reached to a complainant. Section R460-8-7 adds clarifying and removes confusing language regarding the remedies available under state or federal law or regulation. The Authorizing, and Implemented or Interpreted Law reference has been updated to reflect changes made in the 2012 Utah General Session.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 35A-8-711(1)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because Subsection 35A-8-702(3)(b) states the UHC is a "financially independent body" and therefore, receives no state appropriation. Furthermore, the changes made to this rule are merely clarifying in nature and do not entail any additional requirements.

♦ **LOCAL GOVERNMENTS:** There is no cost or savings to any local government because the changes made to this rule are merely clarifying in nature.

♦ **SMALL BUSINESSES:** There is no cost or savings to any small businesses because the changes made to this rule are merely clarifying in nature.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to other persons because the changes made to this rule are merely clarifying in nature.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated additional compliance costs (in addition to existing compliance costs) for persons affected by this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** It is anticipated that there will be no fiscal impact on businesses from the implementation of the changes to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HOUSING CORPORATION (UTAH)

ADMINISTRATION  
2479 LAKE PARK BLVD  
WEST VALLEY CITY, UT 84120  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at [jhanks@uthc.org](mailto:jhanks@uthc.org)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Grant Whitaker, President and CEO

**R460. Housing Corporation, Administration.**

**R460-8. Americans with Disabilities Act (ADA) Complaint Procedures.**

**R460-8-1. Authority and Purpose.**

(1) UHC, pursuant to 28 CFR 35.107 adopts and publishes within this rule, complaint procedures providing for prompt and equitable resolution of complaints filed according to Title II of the Americans With Disabilities Act, as amended.

(2) The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, as amended, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

**R460-8-2. Filing of Complaints.**

(1) Any qualified individual (defined as an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by UHC; also, an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires) may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(1) The complaint shall be filed timely to assure prompt, effective assessment and consideration of the facts, but no later than 90 days from the date of the alleged act of discrimination.

(2) The complaint shall be filed with the president of UHC or the president's appointed ADA coordinator in writing or in another accessible format suitable to the complainant.

(3) Each complaint shall include the following:

- (a) the complainant's name and mailing address;
- (b) the nature and extent of the complainant's disability;
- (c) a description of UHC's alleged discriminatory action in sufficient detail to inform UHC of the nature and date of the alleged violation;
- (d) a description of the action and accommodation desired; and

(e) a signature of the complainant or by his or her legal representative.

(4) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

**R460-8-3. Investigation of Complaint.**

(1) The ADA coordinator shall investigate each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R460-8-2(3) if it is not made available by the complainant.

(2) When conducting the investigation, the ADA coordinator may seek assistance from UHC's legal counsel and human resource staff in determining what action, if any, shall be taken on the complaint. The coordinator will consult with the president ~~[and the ADA state coordinating committee]~~ before making any decision that would involve any of the following:

- (a) an expenditure of funds;
- (b) facility modifications; or
- (c) modification of an employment classification.

**R460-8-4. Issuance of Decision.**

(1) Within 30 days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another suitable format stating what action, if any, shall be taken on the complaint.

(2) If the ADA coordinator is unable to reach a decision within the 30 day period, he shall notify the complainant in writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

**R460-8-5. Appeals.**

(1) The complainant may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be filed in writing with the president or a designee other than the ADA coordinator.

(3) The filing of an appeal shall be considered as authorization by the complainant to allow review of all information, including information classified as private or controlled, by the president or designee.

(4) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(5) The president or designee shall review the factual findings of the investigation and the complainant's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. The president may consult with legal counsel and/or the human resource department ~~[the state ADA coordinating committee]~~ before making any decision that would involve any of the following:

- (a) an expenditure of funds;
- (b) facility modifications; or
- (c) modification of an employment classification.

(6) The decision shall be issued within 45 days after receiving the appeal and shall be in writing or in another suitable format to the individual.

(7) If the president or his designee is unable to reach a decision within the ~~45~~30 day period, he shall notify the complainant in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

**R460-8-6. Classification of Records.**

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, president or their designees issue the decision at which time any portions of the record that may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302 or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, president or their designees shall be classified as public information.

**R460-8-7. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the Utah Antidiscrimination Act (see Utah Code 34A-5[-104]); the Federal ADA Complaint Procedures (28 CFR 35 Subpart F, ~~beginning with Part 35.170, 1991 edition~~); or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: housing finance**

**Date of Enactment or Last Substantive Amendment:** ~~1993~~2012

**Notice of Continuation:** October 15, 2007

**Authorizing, and Implemented or Interpreted Law:** ~~9-4-910~~35A-8-711

Insurance, Administration  
**R590-171**  
Surplus Lines Procedures Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36846

FILED: 09/21/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The changes to this rule come as a result of the federal Non-Admitted and Reinsurance Reform Act (NRRRA) of 07/21/2011.

**SUMMARY OF THE RULE OR CHANGE:** In Section R590-171-3, adds a new definition for "Exempt Commercial Purchaser." In Section R590-171-6, deletes the subsection

defining conditions for purchasing surplus lines insurance and refers to the "Exempt Commercial Purchaser" definition and its requirements to access the surplus lines market. Section R590-171-11 is being deleted since it is no longer needed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-15-111 and Section 31A-2-201 and Subsection 31A-15-103(11) and Subsection 31A-15-103(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** No filings or fee changes will result from this change, nor will there be a change in department employee workload. The change to this rule simplifies access to surplus lines insurers.

◆ **LOCAL GOVERNMENTS:** This change will have no impact on local government.

◆ **SMALL BUSINESSES:** The changes to this rule deal solely with large employers, i.e., insurance companies and insureds with 500 employees or more who are looking for insurance coverage with a surplus lines insurer.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to this rule deal solely with large employers, i.e., insurance companies and large employers with 500 employees or more who are looking for insurance coverage with a surplus lines insurer. The changes will allow large businesses to access the surplus lines market more easily. Those who would have had to first be declined coverage from two standard insurance companies can now go directly to a surplus lines carrier for coverage. This change will have no effect on insurance premiums.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to this rule will allow large businesses to access the surplus lines market more easily. Those who would have had to be declined coverage from two standard insurance companies will be able to go directly to a surplus lines insurer for coverage. This change will have no affect on insurance premiums.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to this rule 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](mailto:jwhitby@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

## **R590. Insurance, Administration.**

### **R590-171. Surplus Lines Procedures Rule.**

#### **R590-171-1. Authority.**

This rule is promulgated pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111.

#### **R590-171-2. Purpose and Scope.**

A. The purpose of this rule is:

- (1) to recognize The Surplus Line Association of Utah as the advisory organization of surplus lines producers;
- (2) to authorize The Surplus Line Association to conduct the examination of surplus lines transactions;
- (3) to authorize The Surplus Line Association to collect a stamping fee;
- (4) to require that each person licensed as a surplus lines producer in Utah be a member of the advisory organization;
- (5) to regulate access to the surplus lines market, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge; and
- (6) to prescribe procedures for the placement of insurance with surplus lines insurers.

B. This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah.

#### **R590-171-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:

A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.

B.(a) "Exempt Commercial Purchaser" means any person purchasing commercial insurance from the surplus lines market that, at the time of placement, meets the following requirements:

- (i) The person employs or retains a qualified risk manager to negotiate insurance coverage;
- (ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and
- (iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of \$20,000,000 as such amount is adjusted pursuant to Subsection (b);

(B) The person generates annual revenues in excess of \$50,000,000 as such amount is adjusted pursuant to Subsection (b);

(C) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000 as such amount is adjusted pursuant to Subsection (b); or

(E) The person is a municipality with a population in excess of 50,000 persons.

(b) Effective on January 1, 2018, and each fifth January occurring thereafter, the amounts in R590-171-3.B (a)(iii)(A), (B), and (C) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, 15 U.S.C. § 8206(5).

[B]C. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-88.

[E]D. "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2)(a)(viii) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.

[D]E. "Surplus lines insurer" means a nonadmitted insurer that may place business, pursuant to Title 31A, Chapter 15, Part 1 and this rule, with a surplus lines producer.

[E]E. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

#### **R590-171-4. Surplus Line Association of Utah.**

A. Surplus Line Association of Utah is recognized as the advisory organization of surplus lines producers authorized by Section 31A-15-111.

B. Each person licensed as a surplus lines producer in Utah must be a member of the Surplus Line Association of Utah.

C. The Surplus Line Association of Utah is authorized:

- (1) to facilitate and encourage compliance by its members with the laws of Utah and the rules of the commissioner relative to surplus lines insurance and to act in other matters as specified by Section 31A-15-111;
- (2) to conduct the examination of surplus lines transactions required under Subsection 31A-15-103(11);
- (3) to make a determination that a surplus lines transaction is in compliance with Subsection 31A-15-103(11) and with Sections R590-171-6 and 7 of this rule; and
- (4) to collect the stamping fee prescribed by Subsection 31A-15-103(11)(d).

#### **R590-171-5. Export List.**

A. (1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with surplus lines insurers.

(2) The commissioner may consider the following in determining the insurance coverages and classes to be listed:

- (a) the current marketplace;
- (b) information from the Surplus Line Association Board of Directors;
- (c) information from admitted and surplus lines insurers doing business in Utah;
- (d) information from other sources, including producers and consumers; and
- (e) any other information the commissioner deems relevant.

(3) Any person may request in writing that, at the next publication of the list, the commissioner add or remove a coverage or class of insurance from the list. The person must provide evidence of market conditions to substantiate the request.

B. The list shall be published at least annually but may be revised and republished at any time.

#### **R590-171-6. Conditions for Placing Insurance with Surplus Lines Insurers.**

Placement of insurance with surplus lines insurers pursuant to Section 31A-15-103 may only be done in accordance with either Section A, B or C below.

A. Insurance coverages and classes included on the export list may be placed with surplus lines insurers.

B. Insurance coverages and classes not included on the export list may be placed with surplus lines insurers only under the following conditions:

(1) A good faith effort must be made to place the insurance with admitted insurers the producer has reason to believe will consider writing the type of coverage or class of insurance involved. If that effort shows that the insurance cannot be obtained because of underwriting reasons or the insured requires specific terms and conditions of coverage which are unavailable through admitted insurers, the insurance may be placed with surplus lines insurers. Placement with the surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive as defined in Subsection 31A-19a-201(2).

(2) The inability to place the insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer.

(3) The producer must document his efforts to place the insurance with admitted insurers. The documentation must include the record of the efforts to place the insurance and a written explanation confirming the effort as being in good faith. The good faith effort documentation shall be maintained in the surplus lines producer's and the originating producer's files for at least three years from the inception date of coverage or renewal.

~~\_\_\_\_\_ C. Substantial insureds may purchase insurance from surplus lines insurers pursuant to Section 31A-15-103 if each of the following conditions is met:~~

~~\_\_\_\_\_ (1) the insured procures the insurance for its risk exposures by use of an employee of the insured whose full time responsibilities and duties consist of purchasing insurance and risk management;~~

~~\_\_\_\_\_ (2) the insurance procured for property and casualty coverages, excluding workers' compensation insurance, exceeds an annual aggregate premium of \$500,000; and~~

~~\_\_\_\_\_ (3) the insured's risk manager and an officer of the company sign an affidavit confirming items (1) and (2). This affidavit shall be retained by the surplus lines producer and one copy shall be attached to the submission documentation required under R590-171-8.~~

~~\_\_\_\_\_ ] \_\_\_\_\_ C. An exempt commercial purchaser, that, at the time of placement, meets the requirements as defined in R590-171-3(B), may purchase commercial insurance from the surplus market.~~

D. All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.

#### **R590-171-7. Conditions for Marketing Insurance with Surplus Lines Insurers.**

A. Producers may not solicit business on behalf of a surplus lines insurer. However:

(1) Producers may advertise the availability of insurance products for the insurance coverages and classes included on the export list to potential insureds and other producers.

(2) Surplus lines producers may advertise their services and product lines to other producers.

(3) Such advertisements shall identify the fact that the insurance will be placed with a surplus lines insurer. The advertisements must not identify the insurer by name nor act as a solicitation on behalf of any surplus lines insurer. The advertisements shall not identify specific rates or specific policy provisions.

B. Once negotiations over the available terms and conditions for specific coverages begin, at least the following facts must be disclosed in writing to the potential insured:

(1) that the insurance will be placed through a surplus lines insurer and the name of the insurer;

(2) that the producer is not a producer of the potential insurer because surplus lines insurers are not permitted to appoint producers;

(3) that the surplus lines market is a specialty market that has limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

(4) that no protection is afforded under any Utah guaranty fund mechanism.

C. Subject to the general provisions of Section 31A-23a-501, a surplus lines producer may originate surplus lines insurance or accept applications for surplus lines insurance from any other producer duly licensed as to the kinds of insurance involved. The surplus lines producer may compensate the originating producer involved in the transaction.

D. Only that portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer. If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer. An explanation must be provided in the submission documentation outlined in R590-171-8.

**R590-171-8. Reporting and Examination.**

A. No later than 60 days after the effective date of a policy or a certificate of insurance that has been placed with a surplus lines insurer, the surplus lines producer must file a complete copy of the policy or certificate and justification for placement with a surplus lines insurer with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a).

B. Justification for placement with a surplus lines insurer shall:

(1) for insurance exposures placed pursuant to R590-171-6.A, consist of identification of the specific coverage or class on the export list; or

(2) for insurance exposures placed pursuant to R590-171-6.B, consist of a copy of the record of the effort to place with admitted insurers required by R590-171-6.B(3); or

(3) for insurance placed pursuant to R590-171-6.C, consist of a copy of an affidavit signed by the insured; and

(4) if applicable, consist of the explanation required by R590-171-7.D; and

(5) consist of any other information or documentation pertinent to the surplus lines placement.

C. The Surplus Line Association shall provide submission forms to be used for complying with R590-171-8.B.

D. If the contract or certificate is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by R590-171-8B must be filed with the Surplus Lines Association of Utah.

E. If the examination performed by the Surplus Line Association determines that the placement of a policy or certificate of insurance with a surplus lines insurer is not in compliance with Section 31A-15-103(11)(a) or this rule, the Surplus Line Association shall take such corrective action as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.

**R590-171-9. Rule Distribution.**

The Surplus Line Association of Utah shall distribute a copy of this rule to every surplus lines producer and instruct all surplus lines producers as to its scope and operation.

**R590-171-10. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

**~~R590-171-11. Enforcement Date.~~**

~~The commissioner will begin enforcing the revised provisions of this rule upon the effective date of this rule.~~

**~~R590-171-11. Severability.~~**

If a provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment:**  
~~[September 28, 2009]~~2012

**Notice of Continuation:** May 27, 2010

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-15-103; 31A-15-111

**Natural Resources, Parks and  
Recreation  
R651-408  
Off-Highway Vehicle Education  
Curriculum Standards**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 36856

FILED: 09/25/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah State Parks Off-highway Vehicle (OHV) Program is directed to pursue a safety education program according to the policy declaration (Section 41-22-1). Section 41-22-31 allows the Utah State Parks Board to establish curriculum standards and components of an OHV safety education course. The OHV program previously taught students by utilizing staff and volunteers to educate thousands of Utah youth through a classroom and skills module course. About three years ago, after researching education learning trends, the OHV program decided to adopt two private online OHV safety certification courses. This follows Subsection 41-22-31(2) in that "the Division shall cooperate with private corporations to implement" a safety certification.

**SUMMARY OF THE RULE OR CHANGE:** Last year the Division of Utah State Parks was asked by the Governor's Office to review our rules and determine if any rules should be modified or removed to improve services to the general public. After the review, it was determined that Rule R651-408 should be removed. The OHV program no longer provides a classroom or skills module course so there is no need to have a rule that outlines Student Requirements. In addition, since the OHV program does not teach with the aid of paid staff or volunteers, the Safety Instructor Requirements are not necessary. Also, any OHV duplicate education certificates are identified in the Division fee schedule now. The use of volunteers to teach OHV program education courses has been eliminated because there is no need to reimburse OHV safety instructors. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-22-31 and Section 41-22-32 and Section 41-22-33

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No costs are associated with this rule. The anticipated savings to the state budget would be in the thousands, simply because the volunteer OHV instructor reimbursement is no longer being used. The Division of Utah State Parks and Recreation has not used the volunteer OHV instructor reimbursement for more than two years because the OHV education courses are being offered by private course providers.

◆ LOCAL GOVERNMENTS: There is no anticipated costs or savings to local government because the rule is being repealed and will no longer exist.

◆ SMALL BUSINESSES: There is no anticipated costs or savings to small business because the rule is being repealed and will no longer exist.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses or local government entities will experience no costs or savings because the rule is being repealed and will no longer exist.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no fees associated with this rule as the OHV education replacement cards costs are listed in the Division of Utah State Parks and Recreation fee schedule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no impact on business.

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

NATURAL RESOURCES  
PARKS AND RECREATION  
ROOM 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Fred Hayes, Director

**R651. Natural Resources, Parks and Recreation.**

~~[R651-408. Off-Highway Vehicle Education Curriculum Standards:~~

~~**R651-408-1. Student Requirements:**~~

~~1. A student under 18 years old attending any off-highway vehicle education course shall be required to have a parent or adult responsible for that student attend at least the first hour of any classroom session, and all of any applicable skills module.~~

~~2. All students shall submit to the course instructor a Parental Consent and Waiver form signed by their parent or legal guardian during any off-highway vehicle education class.~~

~~3. All students participating in the skills module shall wear the following safety equipment: a properly fitted and fastened, safety-rated helmet, designed for motorized use, safety proven eye protection, gloves, and long pants and sturdy shoes or boots that cover the foot and ankle.~~

~~4. A student must receive a grade of 70 percent or better on the written test before participating in a corresponding skills module. A score of 70 percent is also necessary on the skills module in order to be certified.~~

~~5. A student may challenge the written test or any of the skills modules by passing the appropriate test.~~

~~6. A student failing any test or skills module may be retested no sooner than seven days after the initial test. If the student fails the retest of a skills module, then he must retake the entire module.~~

~~7. A student participating in the skills module must be able to straddle the machine, with a slight bend to his knees, while his feet are on the foot rests.~~

~~**R651-408-2. Safety Instructor Requirements:**~~

~~1. An off-highway vehicle safety instructor shall teach a minimum of two off-highway vehicle courses or skills modules per year to maintain instructor certification.~~

~~**R651-408-3. Off-Highway Vehicle Education Fees:**~~

~~1. The fee for the off-highway vehicle education course is \$10.~~

~~2. The fee to challenge the off-highway vehicle education course by taking the knowledge and skills test is \$5.~~

~~3. A duplicate off-highway vehicle education certificate is \$2.~~

~~**R651-408-4. Volunteer Certified Safety Instructor Reimbursement:**~~

~~Volunteer certified OHV safety instructors will be reimbursed \$5 for each student they train and test in the Division's OHV Education Program.~~

~~**KEY: off-highway vehicles**~~

~~**Date of Enactment or Last Substantive Amendment: April 1, 2003**~~

~~**Notice of Continuation: July 7, 2008**~~

~~**Authorizing, and Implemented or Interpreted Law: 41-22-31; 41-22-32; 41-22-33]**~~

Natural Resources, Wildlife Resources  
**R657-9**  
 Taking Waterfowl, Common Snipe and  
 Coot

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36785

FILED: 09/18/2012

**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's waterfowl program.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions to the above listed rule define the following area as closed to the taking, hunting, shooting at or rallying of waterfowl, snipe or coot -- Antelope Island causeway, within 600 feet of either the north or south side.

**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 only adds an area of a state park to the list of areas that prohibit the taking of waterfowl, snipe or coot, it does not make any changes to any division processes therefore, the Division of Wildlife Resources (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 has no impact on the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment adds a section of Antelope Island causeway to the list of areas prohibited to the taking, hunting, shooting at or rallying of waterfowl, snipe or coot and therefore does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment adds a section of Antelope Island causeway to the list of areas prohibited to the taking, hunting, shooting at or rallying of waterfowl, snipe or coot and therefore does not have the potential to generate a cost or savings impact to sportsmen or to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment adds a section of Antelope Island causeway to the list of areas prohibited to the taking, hunting, shooting at or rallying of waterfowl, snipe or coot and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons. DWR determines that this amendment will not create additional costs for those who participate in wildlife related activities in Utah.

**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 11/14/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012**

**AUTHORIZED BY: James Karpowitz, Director**

**R657. Natural Resources, Wildlife Resources.**

**R657-9. Taking Waterfowl, Common Snipe and Coot.**

**R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-30. Closed Areas.**

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

(a) Antelope Island causeway - within 600 feet of either the north or south side.

(b) Brown's Park - That part adjacent to headquarters.

([b]c) Clear Lake - Spring Lake.

([e]d) Desert Lake - That part known as "Desert Lake."

([d]e) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

([e]f) Ogden Bay - Headquarters area.

([f]g) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

([g]h) Salt Creek - That part as posted known as "Rest Lake."

([h]i) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

([i]j) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

([j]k) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

([k]l) Great Salt Lake Marina and adjacent areas as posted.

([l]m) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

([m]n) Salt Lake International Airport - Hunting and shooting prohibited as posted.

**KEY: wildlife, birds, migratory birds, waterfowl**

**Date of Enactment or Last Substantive Amendment:** [~~October 24, 2011~~]**2012**

**Notice of Continuation:** August 16, 2011

**Authorizing, and Implemented or Interpreted Law:** 23-14-19; 23-14-18; 50 CFR part 20

## Public Safety, Fire Marshal R710-9

### Rules Pursuant to the Utah Fire Prevention and Safety Act

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36852

FILED: 09/24/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** On 09/11/2012, the Utah Fire Prevention Board

met in a regularly scheduled Board meeting and proposed to amend Rule R710-9. The Board proposes to delete the requirements for the usage of antifreeze in fire sprinkler systems because those requirements are now listed in Section 15A-5-204 of the state statutes and do not need to be continued in the rule. The Board also proposes to add a new section to the rule that establishes the requirements for the issuance of blasting permits as required in Section 15A-5-208, and evolved from S.B. 57 in the 2012 General Session.

**SUMMARY OF THE RULE OR CHANGE:** A summary of the proposed rule amendments are as follows: 1) in Subsection R710-9-1(1.2), the Board proposes to add verbiage to the rule that defines the statute for the adoption of the Utah State Fire Code; 2) in Subsection R710-9-1(1.3), the Board proposes to add the preamble to define the issuance of blasting permits in the rule; 3) in Section R710-9-11, the Board proposes to eliminate the requirements for the usage of antifreeze in fire sprinkler systems because the exact verbiage is now in Section 15A-5-204 of the state statutes; and 4) in Section R710-9-12, the Board proposes to add requirements by rule for the issuance of blasting permits by the State Fire Marshal's Office under certain conditions as required in Section 15A-5-208.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 15A-5-208(3)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There will be an aggregate anticipated cost of approximately \$1,000 to the state budget to enact this new statute and rules on blasting permits. The cost will be for staff to create the needed applications, permits, directions, testing, and education to the State Fire Marshal's Office to issue these newly created permits.

♦ **LOCAL GOVERNMENTS:** There will be no aggregate anticipated cost or savings to local government because these proposed rule amendments have no impact whatsoever on local government.

♦ **SMALL BUSINESSES:** There will be no aggregate anticipated cost or savings to small businesses for the enactment of these rule amendments. The deletion of the antifreeze rule amendments have been moved from rule to statute, and the issue of blasting permits by the State Fire Marshal's Office opens another avenue for blasting companies to receive the permit in certain specific cases.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no aggregate anticipated cost or savings to other persons for the enactment of these rule amendments. The deletion of the antifreeze rule amendments are due to the incorporation of those requirements in the Utah State Fire Code statutes. The addition of another avenue to receive a blasting permit actually simplifies the process for blasting companies under certain specific conditions.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance cost for affected persons for the enactment of these administrative rules. The basis for the rule

amendments is to remove an administrative rule that is now listed in state statutes, and add another avenue for blasting companies to receive a blasting permit when blasting through multi-jurisdictional communities, and to receive a blasting permit from a very small community where the volunteer fire department is not set up to issue blasting permits.

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 administrative rules. The administrative rule makes two changes to the rule. One is to remove a portion of the rule that is now in statute, and the other is to create rules for the administration of the issuance of blasting permits. Neither of these amendments create a fiscal impact to businesses.

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

PUBLIC SAFETY  
FIRE MARSHAL  
ROOM 302  
5272 S COLLEGE DR  
MURRAY, UT 84123-2611  
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 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Brent Halladay, State Fire Marshal

#### **R710. Public Safety, Fire Marshal.**

##### **R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.**

###### **R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention and Safety Act", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204[;]; Title 15A, Chapter 1, Section 403; and, Title 15A, Chapter 5, Section 208, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, procedures for the issuance of blasting permits, and amendments and additions.

1.4 There is further adopted as part of these rules the following codes which are incorporated by reference:

1.4.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act, except as amended by provisions listed in R710-9-[40]11, et seq.

1.5 Copies of the above code are on file in the Division of Administrative Rules and the Office of the State Fire Marshal.

###### **R710-9-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

2.5 "Division" means State Fire Marshal.

2.6 "IFC" means International Fire Code.

2.7 "LFA" means Local Fire Authority.

2.8 "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.

2.9 "Restricted Account" means Firefighter Support Restricted Account.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.12 "UCA" means Utah Code Annotated, 1953.

###### **R710-9-3. Conduct of Board Members and Board Meetings.**

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less ~~that~~ than 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of

Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governor's office for status review.

**R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.**

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

**R710-9-5. Procedures to Amend the International Fire Code.**

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

**R710-9-6. Fire Advisory and Code Analysis Committee.**

6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

6.2.1 A representative from the State Fire Marshal's Office.

6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

6.2.4 A representative from the Department of Health.

6.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

6.2.6 A representative from the Department of Human Services.

6.2.7 A representative from Forestry, Fire and State Lands.

6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

6.5 The Council shall select one of ~~its~~its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

**R710-9-7. Enforcement of the Rules of the State Fire Marshal.**

7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

7.4.2 Public and private schools.

7.4.3 Privately owned colleges and universities.

7.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

7.4.5 Places of assembly as defined in Section 9-2 of this rule.

7.5 The Board shall require prior to approval of a grant the following:

7.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

**R710-9-8. Fire Prevention Board Budget and Amendment [Sub-Committees]Subcommittees.**

8.1 There is created two Fire Prevention Board [~~Sub-Committees~~]subcommittees known as the Budget Subcommittee, and the Amendment Subcommittee. [~~The~~]Each subcommittee's membership shall be appointed from members of the Board.

8.2 [~~Membership on the Sub-Committee~~]Subcommittee membership shall be by appointment of the Board Chair or as volunteered by Board members. [~~Membership on the Sub-Committee~~]Subcommittee membership shall be limited to four Board members.

8.3 [~~The Sub-Committee~~]Each subcommittee shall meet as necessary and shall vote and appoint a chair to represent the [~~Sub-Committee~~]subcommittee at regularly scheduled Board meetings.

**R710-9-9. Firefighter Support Restricted Account.**

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of [it's]its members to act in the position of chair[;]. [t]The chair shall serve for a term of one year, and [the chair]shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

**R710-9-10. Regulation of Novelty Lighters.**

10.1 All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy and Novelty Lighter Initiative, Toy-like Lighters Disavowed List, <http://publicsafety.utah.gov/firemarshal>, shall not be sold or offered for sale in the State of Utah.

**R710-9-11. Amendments and Additions.**

~~There are currently no amendments and additions~~[The following amendments and additions are hereby] adopted by the Board for application statewide[;].

~~11.1 IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: 903.3.1.1.2 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.~~

~~11.2 IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: 903.3.1.2.2 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13R, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.~~

~~11.3 IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: 903.3.1.3.1 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13D, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.~~

~~11.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Tag and Information. A tag shall be attached to the riser indicating the date the antifreeze solution was tested. The tag shall also indicate the type and concentration of antifreeze solution by volume with which the system is filled, the date the antifreeze was replaced if applicable, the name of the contractor that tested and/or replaced the antifreeze solution, the contractor's license number, a statement indicating if the entire~~

~~system was drained and replaced with antifreeze, and a warning to test the concentration of the antifreeze solutions at yearly intervals.]~~

**R710-9-12. Issuing of Blasting Permits.**

12.1 When a local fire department or AHJ does not have a procedure in place for the issuance of a blasting permit, or when blasting occurs as part of an on-going/continuous project across more than one fire service jurisdiction, the requesting applicant must provide all of the following to the SFM:

12.1.1 Completion of an approved blasting permit application

12.1.2 A copy of a current Alcohol, Tobacco, and Firearms (ATF) License/Permit

12.1.3 A copy of a current ATF listed Responsible Parties and Employee Possessors Permit

12.1.4 Twenty-Four (24) hour emergency contact information; including name, address, phone numbers, and email for responsible parties, local/site project supervisor or foreman, and primary contact(s) information for the requested permit.

12.1.5 Purpose of the permit requested

12.1.6 Location of proposed blasting including the physical address and/or map of the area

12.1.7 Information on explosive types, quantities in storage, shot quantities and day use estimates.

12.1.8 Proof of insurance.

12.2 Upon approval, the applicant shall present the permit to all affected jurisdictions.

12.3 Appeals of permit denials shall follow the procedures outlined in R710-9-15.

**R710-9-1[2]3. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

**R710-9-1[3]4. Validity.**

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

**R710-9-1[4]5. Adjudicative Proceedings.**

1[4]5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

1[4]5.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

1[4]5.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

1[4]5.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

1[4]5.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

1[4]5.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

1[4]5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

1[4]5.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire prevention, law**

**Date of Enactment or Last Substantive Amendment:**  
[November 21, 2011]2012

**Notice of Continuation: June 7, 2012**

**Authorizing, and Implemented or Interpreted Law: 53-7-204; 15A-1-403; 15A-5-208**

**Tax Commission, Property Tax**

**R884-24P-73**

**Urban Farming Assessment Pursuant to Utah Code Ann. Section 59-2-1703**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36862

FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed section indicates when land is actively devoted to urban farming for purposes of the urban farming assessment.

**SUMMARY OF THE RULE OR CHANGE:** S.B. 122 (2012 General Session) enacts provisions for valuing land that is actively devoted to urban farming in a county of the first class and requires the Tax Commission to provide guidance for when land is actively devoted to urban farming. The proposed rule indicates that land is actively devoted to urban farming if it meets the productive capabilities of land classified as Irrigated I. In addition, the proposed rule indicates how land qualifying for the urban farming assessment shall be valued.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-1703

**ANTICIPATED COST OR SAVINGS TO:**

◆ THE STATE BUDGET: None--Any fiscal impact was considered in S.B. 122 (2012).

- ◆ LOCAL GOVERNMENTS: None--Any fiscal impact was considered in S.B. 122 (2012).
- ◆ SMALL BUSINESSES: None--Any fiscal impact was considered in S.B. 122 (2012).
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact was considered in S.B. 122 (2012).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed rule provides guidance on when land qualifies for the urban farming assessment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While the enactment of S.B. 122 (2012) may create a tax savings for some agricultural businesses, adopting this rule has no fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 TAX COMMISSION  
 PROPERTY TAX  
 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](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R884. Tax Commission, Property Tax.**  
**R884-24P. Property Tax.**  
**R884-24P-73. Urban Farming Assessment Pursuant to Utah Code Ann. Section 59-2-1703.**

(1) For purposes of the property tax assessment for land used for urban farming, land is actively devoted to urban farming under Subsection 59-2-1703(2)(a)(iii) if the production per acre for a given area and a given type of land meets the productive capabilities of land classified as Irrigated I.

(2) The value of land qualifying for valuation under Section 59-2-1703 shall be determined by reference to Table 1, Irrigated I, in R884-24P-53.

**KEY:** taxation, personal property, property tax, appraisals  
**Date of Enactment or Last Substantive Amendment:** July 26, 2012  
**Notice of Continuation:** January 3, 2012  
**Authorizing, and Implemented or Interpreted Law:** Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-

211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

**Transportation, Motor Carrier**  
**R909-2**  
**Utah Trucking Guide**

**NOTICE OF PROPOSED RULE**  
 (Repeal and Reenact)  
 DAR FILE NO.: 36863  
 FILED: 09/27/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was previously written as a guide in an easy to read format for the motor carrier industry. The Utah Trucking Guide's purpose was to protect and preserve Utah's highway infrastructure by regulating the movement of over-dimensional and overweight vehicles and loads in Utah. The Motor Carrier Division is repealing Rule R909-2 and reenacting it as the Utah Size and Weight Rule. The purpose of this change is to combine all rules regarding size and weight and over-dimensional vehicles into one concise rule, written in rule format.

SUMMARY OF THE RULE OR CHANGE: The Utah Size and Weight Rule contains provisions related to legal size and weight dimensions, general permit provisions, tire loads, variable load axles, restrictions, divisible and non-divisible provisions, longer combination vehicles, over weight vehicles, mobile and manufactured homes, pilot escort requirements for training and drivers, farmers, special mobile equipment, special truck equipment, and by-pass provisions. Four rules are proposed to be repealed and their provisions added to this rule. Rule R912-6 Port-of-Entry By-Pass Permit Provisions - These provisions are now located in Section R909-2-36 and are revised to include qualifications based on the Safety Measurement System of the Federal Motor Carrier Safety Administration, which went into effect in December of 2010. This provision affects 15-20 companies that apply for the privilege to by-pass a port of entry multiple times per day. The by-pass permit saves the driver time, and saves money on gas and maintenance. Rule R912-8 Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah - This provision is now located in Section R909-2-7 entitled Variable Load Axles (VLS). This section regulates the number of fixed axles, ensures that the VLS will be self steering, and that VLS do not exceed legal or bridge formula, or tire rating. Rule

R912-10 Requirements for Pilot/Escort Qualified Training and Certification Programs - This section is now located in Section R909-2-29. Nonsubstantive changes were included to allow the training entity to submit re-certification lists to the department quarterly, instead of within 72 hours of a course, and drivers are not required to submit a current MVR prior to taking a course. Rule R912-16 Special Mobile Equipment - This section is now located in Section R909-2-34. Special Mobile Equipment (SME) vehicles are still required to complete a special mobile equipment affidavit, acquire a single trip permit and to operate under their own power on approved routes, which shall not generally exceed 20 miles. Additional changes to the rule include new definitions for "incidental", and "multi-trip" and revised definitions for "saddle mount", "special truck equipment", and "truck" found in Section R909-2-3. Four tables are included for legal size vehicle dimensions; maximum gross and axle weight limitations; single trip, and semi-annual permit by axle and pounds; and high risk motor carrier criteria. The General Oversize or Overweight Provisions in Section R909-2-8 now allow a permit to be in paper or electronic format. All restrictions are in their own separate sections, with a revision of the weather restrictions. Draw bar marking requirements were added in Section R909-2-16 to support changes in Section 72-7-403 requiring retro reflective tape and amber lights on both the right and left side of the drawbar. Pursuant to Section R909-2-23 longer combination vehicles exceeding 81 feet may not operate on secondary highways other than those pre-approved by the division. In Section R909-2-24, an exception is allowed to the rule that a divisible load permit may not be used to transport a non-divisible load. Pursuant to Section R909-2-33 when transporting utility poles, the company may request to have the permit issued to the truck or truck tractor, rather than the trailer. Pursuant to Section R909-2-37 the annual review of permit conditions will be done at the Motor Carrier Advisory Board in April of each year. (DAR NOTE: The proposed repeal of Rule R912-6 is under DAR No. 36864, the proposed repeal of Rule R912-8 is under DAR No. 36865, the proposed repeal of Rule R912-10 is under DAR No. 36866, and the proposed repeal of Rule R912-16 is under DAR No. 36867 in this issue, October 15, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-1a-102 and Section 41-1a-1206 and Section 41-1a-231 and Section 72-1-201 and Section 72-7-402 and Section 72-7-404 and Section 72-7-406 and Section 72-7-407 and Section 72-9-301 and Section 72-9-303 and Section 72-9-502

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the provisions being repealed to be included in this rule already existed and are being changed from an industry format to a rule format.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the provisions being repealed to be included in this rule already existed and are being changed from an industry format to a rule format.

- ◆ **SMALL BUSINESSES:** The port-of-entry by-pass permit is now based on the Safety Measurement System developed by the Federal Motor Carrier Safety Administration. There will be some savings to motor carriers that can meet the criteria for a by-pass permit. This permit saves driver time, gas costs and maintenance costs by allowing a company vehicle to operate on a regular route that does not require going through a port of entry multiple times per day. Motor Carrier companies that operate trailers with draw bars will now be required to add retro reflective tape and amber lights on both the right and left side of the drawbar as noted in Section 72-7-403. It is estimated that installing these safety features to tow bars that exceed 15 feet in length will cost approximately \$250 per vehicle/trailer.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to persons other than small business, businesses, or local government entities because these rules already existed, but were changed from an industry format to a rule format.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Motor Carrier companies that operate trailers with draw bars will now be required to add retro reflective tape and amber lights on both the right and left side of the drawbar as noted in 72-7-403. It is estimated that installing these safety features to tow bars that exceed 15 feet in length will cost approximately \$250 per vehicle/trailer.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The port-of-entry by-pass permit is now based on the Safety Measurement System developed by the Federal Motor Carrier Safety Administration. There will be lower costs to motor carriers that can meet the criteria for a by-pass permit. This permit saves driver time, gas costs and maintenance costs by allowing a company vehicle to operate on a regular route that does not require going through a port of entry multiple times per day. Motor Carrier companies that operate trailers with draw bars will now be required to add retro reflective tape and amber lights on both the right and left side of the drawbar as noted in Section 72-7-403. It is estimated that installing these safety features to tow bars that exceed 15 feet in length will cost approximately \$250 per vehicle/trailer.

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

TRANSPORTATION  
MOTOR CARRIER  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: John Njord, Executive Director

**R909. Transportation, Motor Carrier.**

**[R909-2. Utah Trucking Guide.**

**R909-2-1. Authority.**

~~This rule is enacted under the authority of Sections 72-7-406.~~

**R909-2-2. Applicability.**

~~All commercial motor vehicle operators and motor carriers engaged in the movement of over dimensional and over weight vehicles and loads must comply with permit conditions as specified in the Utah Trucking Guide.~~

**R909-2-3. Adoption of the Utah Trucking Guide.**

~~Permit conditions as specified in July 19, 2011 edition of the Utah Trucking Guide, Chapters 14 thru 27, 29, 31 thru 33 and 36 are hereby incorporated by reference. These conditions apply to all private, common, and contract carriers.~~

**R909-2-4. Annual Review of Permit Regulations and Conditions.**

~~(1) During the regularly scheduled Motor Carrier Advisory Board meeting in May of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.~~

~~(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.~~

~~(3) All interested parties must notify the Department of Transportation Motor Carriers Division of these issues by April 1st of each year to ensure placement on the agenda.~~

~~(4) Any approved changes to permit conditions or regulations will be noted in the Utah Trucking Guide, and the revised edition of the Utah Trucking Guide will be incorporated into this rule.]~~

**R909-2. Utah Size and Weight Rule.**

**R909-2-1. Purpose and Applicability.**

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. All commercial motor vehicle operators, and motor carriers engaged in the movement of over dimensional and over weight vehicles and loads must comply with permit conditions as specified in the Utah Size and Weight rule. These conditions apply to all over dimensional vehicles and loads.

**R909-2-2. Authority.**

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

**R909-2-3. Definitions.**

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(4) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(5) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(6) "Commercial vehicle" as defined in CFR 390.5 and Section 72-9-102.

(7) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(8) "Department" means the Utah Department of Transportation.

(9) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(10) "Division" means the Motor Carrier Division.

(11) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(12) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(13) "Fixed axle" means an axle that is not steerable, self steering or retractable.

(14) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(15) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(16) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(17) "Highway" any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(18) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(19) "Incidental" means transportation that occurs occasionally or by chance, but does not exceed a distance of 20 miles.

(20) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-70, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.

(21) "Laden" means carrying a load.

(22) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceeds legal dimensions and operates on highways by permit for transporting divisible loads.

(23) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(24) "Manufactured home" a transportable factory built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(25) "Manufactured mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in accordance with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(26) "Motor carrier" as defined in Section 72-9-102.

(27) "MVR" means motor vehicle record.

(28) "MUTCD" means Manual on Uniform Traffic Control Devices.

(29) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(30) "Non-divisible" any load or vehicle exceeding applicable length, width, or height or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment.

(31) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(32) "Pole trailer" every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(33) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(34) "Quad axle group" means a group of four consecutive fixed axles.

(35) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(36) "Retractable axle" is an axle which can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(37) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.

(38) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the proceeding vehicle or vehicles.

(39) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(40) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(41) "Special event" means the movement of an over-dimensional load or vehicle.

(42) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(43) "Special truck equipment" or an STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(44) "Spread axle" is two single axles that exceed 96 inches apart.

(45) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(46) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(47) "Triple trailer" means a tractor and three trailers of approximately equal length.

(48) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(49) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(50) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(51) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(52) "Turnpike doubles" means a tractor and two trailers of equal length.

(53) "UCR" means Unified Carrier registration.

(54) "Un-laden" means a vehicle is not carrying a load.

(55) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(56) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

**R909-2-4. Legal Size Vehicle Dimensions.**

(1) Maximum legal vehicle dimensions, laden and unladen, that may be operated without special permits on Utah Highways:

(a) height: 14 feet

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor Vehicle	45 feet	Measured from bumper to bumper.
Trailer	48 feet	A trailer may not exceed 48 feet.
Semi-trailer	53 feet	There is no overall length limitation on a tractor and semi-trailer combination when the semi-trailer length is 53 feet or less.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered	75 feet	Stinger-steered combinations are measured from bumper to bumper. Transporters may have 3 feet of front and 4 feet of rear overhang, but may not exceed 82 feet overall length.
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates. US

highways and reasonable access routes without requiring a permit.  
Reasonable access means to the Interstate or US highway system.

All other combinations including recreational vehicles 65 feet Measured from bumper to bumper.

Overhang 3 feet front 6 feet rear Overhang may not carry any load extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the bed or body of the vehicle.

Drawbar 15 feet The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.

**R909-2-5. Legal Weight Limitations.**

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated in excess of:

TABLE 2

Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	Must comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

**R909-2-6. Tire Load Provision for Single Tires.**

(1) The use of narrow single tires, that are less than 14 inches wide, on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles, except for steering axles, including self steering VLS, or retractable axles, or wide base tires, that are 14 inches or greater.

(2) All axles having a weight in excess of 10,000 pounds shall be equipped with four tires per axles, or wide base single tires.

(3) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring an oversize or overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(d) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

(4) Except for steering axles, self steering VLS and retractable axles, or wide based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 10,000 pounds shall have at least four tires per axle.

(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 30,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 20,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.

(5) Dual or super single tires, that are 14 inches or greater, are required on all trailer axles.

#### **R909-2-7. Variable Load Axles.**

(1) Vehicles with variable load axles are limited as follows:

(a) no more than three fixed axles shall be allowed in any group;

(b) retractable or variable load suspension axles installed after January 1990 shall be self steering on power units or when augmenting a tridem group on trailers;

(i) Non-divisible loads may be exempt from these restrictions upon written approval from the division.

(c) no axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(d) Controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve shall be positioned outside of the cab and be inaccessible from the driver's compartment.

#### **R909-2-8. General Oversize or Overweight Provisions.**

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the appropriate permit must be obtained prior to operating within the State of Utah.

(2) Each oversize or overweight permit shall be carried in the vehicle or combination vehicles.

(a) The permit may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversize or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception. Length limitations do not apply to combinations of vehicles operated at night by a public utility when

required for emergency repair of public service facilities or properties, or when operated with an oversize or overweight permit.

(5) Liability of permittee. The applicant or permittee, as a condition for obtaining an oversize permit, shall assume all responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee, agrees to indemnify and hold harmless the department from any and all claims resulting directly or indirectly from the operation and transportation of vehicles or combination of vehicles operating under an oversize or overweight permit.

#### **R909-2-9. Transfer or Replacement of Permits.**

(1) Division personnel may transfer permits from one vehicle to another for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within the same company;

(b) the customer has sold or purchased a vehicle; or

(c) lease changes from one company to another by providing evidence of permit ownership.

(2) A transfer permit will be issued with the same expiration date as the original permit.

#### **R909-2-10. Permit Revocation, Suspension and Confiscation.**

(1) Violations of any permit that may result in the revocation, suspension or confiscation of the permit include, but are not limited to:

(a) speeding in excess of the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted and all of the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

#### **R909-2-11. Weather Travel Restrictions.**

(1) No carrier shall operate a permitted vehicle or vehicles in excess of 81 feet cargo or cargo carrying length, when the following conditions exist:

(a) wind in excess of 45 m.p.h.;

(b) any accumulation of snow and ice on the roadway; or

(c) visibility less than 1,000 feet.

#### **R909-2-12. Curfew Congestion Restrictions.**

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles in excess of 10 feet wide, 105 feet overall length, and 14 feet in height, Monday thru Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

(a) all highways south of Perry Willard Interchange, I-15, Exit #357;

(b) all highways in Weber, Davis, and Salt Lake Counties;

(c) all highways in Utah County north of I-15, Exit #261;

(d) SR 68, North of mile post 16 in Utah County;

(e) I-80 East side of Salt Lake County mile post 139 to mile post 101 on the West side of Salt Lake County; and

(f) I-84 west of mile post 91.

(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

#### **R909-2-13. Holiday Travel Restrictions.**

(1) Travel is prohibited for loads in excess of 10 feet wide, 105 feet overall length, and 14 feet in height during the following holidays:

(a) Christmas Day;

(b) New Year's Day;

(c) Memorial Day;

(d) Independence Day;

(e) Labor Day; and

(f) Thanksgiving Day.

(2) Monday holiday observance:

(a) when a holiday is observed on a Monday, travel is prohibited from 2 p.m. on Friday until daylight on the Tuesday following the recognized holiday.

(3) Tuesday, Wednesday and Thursday holiday observance: (a) when the holiday is observed on a Tuesday, Wednesday, or Thursday, travel is prohibited from 2 p.m. on the day before the holiday until daylight the day after the holiday.

(4) Friday holiday observance:

(a) when the holiday is observed on a Friday, travel is prohibited from 2 p.m. on Thursday until daylight on Monday following the recognized holiday.

(5) The division may authorized exceptions to the holiday travel restriction based on mitigating circumstances.

(6) The division may prohibit movement of oversize loads during days of anticipated high traffic volume such as those that occur during hunting seasons, other holidays, weather conditions, or special events.

#### **R909-2-14. Night Time Restrictions.**

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

(a) 14 feet high;

(b) 10 feet wide;

(c) 105 feet in length; or

(d) overhang in excess of 10 feet.

#### **R909-2-15. Night Time Travel Provisions.**

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night time travel provisions based on mitigating circumstances.

#### **R909-2-16. Oversize Divisible Load Provisions.**

(1) An oversize permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) the height of the combination or load does not exceed 14 feet;

(b) the width of the combination or load does not exceed 8 feet 6 inches.

(c) in combinations, a longer trailer shall precede the shorter trailer;

(d) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight difference is greater than 4000 pounds; and

(e) drawbars exceeding 15 feet in length shall be marked with retro-reflective tape the entire length of the drawbar on both the left and right side of the drawbar.

(i) The drawbar shall display an amber light on both the right and left side of the drawbar located near the center of the drawbar.

#### **R909-2-17. Oversize Non-Divisible Load Provisions.**

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

(i) 14 feet in height,

(ii) 14 feet 6 inches in width, and

(iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads in excess of this section.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

\_\_\_\_\_ (c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

\_\_\_\_\_ (d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

\_\_\_\_\_ (e) the permittee will assume all costs when a certified police escort or escorts are required.

\_\_\_\_\_ (5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 120 feet in length.

\_\_\_\_\_ (a) Loads exceeding 10 feet wide and 120 feet long shall purchase a single trip permit.

**R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.**

\_\_\_\_\_ (1) One pilot vehicle is required for vehicles or loads, which exceed the following dimensional conditions:

\_\_\_\_\_ (a) 12 feet in width on secondary highways for non-interstate, and 14 feet in width on divided highways for interstates;

\_\_\_\_\_ (b) 105 feet in length on secondary highways and 120 feet in length on divided highways; and

\_\_\_\_\_ (c) overhangs in excess of 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

\_\_\_\_\_ (2) Two pilot escort vehicles are required for vehicles or loads which exceed the following dimensional conditions:

\_\_\_\_\_ (a) 14 feet in width on secondary highways;

\_\_\_\_\_ (b) 16 feet in width on divided highways;

\_\_\_\_\_ (i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

\_\_\_\_\_ (c) 120 feet in length on secondary highways;

\_\_\_\_\_ (d) 16 feet in height on all highways; or

\_\_\_\_\_ (e) when otherwise required by the division.

**R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.**

\_\_\_\_\_ (1) Police escorts are required for vehicles with loads, which exceed:

\_\_\_\_\_ (a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

\_\_\_\_\_ (b) 20 feet wide or 17 feet 6 inches high on all highways; or

\_\_\_\_\_ (c) All loads in excess of 175 feet in length must have a minimum of one police escort;

\_\_\_\_\_ (d) All loads in excess of 200 feet in length will require a minimum of two police escorts.

\_\_\_\_\_ (2) The division may require police escorts based on extenuating circumstances.

**R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.**

\_\_\_\_\_ (1) Oversize non-divisible load lighting:

\_\_\_\_\_ (a) warning lights required when headlights are necessary;

\_\_\_\_\_ (b) front overhang in excess of three feet shall be marked with a steady, amber marker light and red flag;

\_\_\_\_\_ (c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

\_\_\_\_\_ (d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

\_\_\_\_\_ (e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

\_\_\_\_\_ (f) night time travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

\_\_\_\_\_ (2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra large vehicles are in operation. Signs must:

\_\_\_\_\_ (a) be 7 feet by 18 inches;

\_\_\_\_\_ (b) have a yellow background with 10 inch high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

\_\_\_\_\_ (c) be impervious to moisture;

\_\_\_\_\_ (d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

\_\_\_\_\_ (e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

\_\_\_\_\_ (f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

\_\_\_\_\_ (g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are clearly legible at all times;

\_\_\_\_\_ (h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

\_\_\_\_\_ (i) oversize loads signs are not required on LCVs.

\_\_\_\_\_ (3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

\_\_\_\_\_ (a) vehicle or load exceeds 10 feet in width;

\_\_\_\_\_ (b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

\_\_\_\_\_ (c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened so as to wave freely; and

\_\_\_\_\_ (d) over dimensional flagging is not required on LCVs.

**R909-2-21. Convoys.**

\_\_\_\_\_ (1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the division with the following conditions:

\_\_\_\_\_ (a) the number of permitted vehicles in the convoy shall not exceed two;

\_\_\_\_\_ (b) loads may not exceed 12 feet wide or 150 feet overall length;

\_\_\_\_\_ (c) distance between vehicles shall not be less than 500 feet or more than 700 feet;

\_\_\_\_\_ (d) distance between convoys shall be a minimum of one mile;

\_\_\_\_\_ (e) all convoys shall have a certified pilot escort in the front and rear with proper signs;

\_\_\_\_\_ (f) police escorts or department personnel may be required;

\_\_\_\_\_ (g) convoys must meet all lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or night time travel may be obtained by contacting the division, and exceptions may be granted by the division on a case by case basis.

**R909-2-22. Trailers in excess of 48 to 57 Feet in Length.**

(1) Semi-trailers exceeding 48 feet, and up to 53 feet in length are not required to purchase oversize permits when operating on or within one mile of state designated routes and US highways.

(2) Vehicles operating more than one mile from state designated routes and US highways will require an oversize permit available on a single trip, semi annual or annual basis.

(3) Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semi annual or annual permit.

(a) Trailers in excess of 53 feet must have LCV authority to purchase semi-annual and annual permits.

**R909-2-23. Longer Combination Vehicles.**

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor trailer or tractor trailer combination in excess of 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination in excess of 92 feet not to exceed 95 feet in length, 14 feet in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) in combinations, a longer trailer shall precede the shorter trailer;

(b) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet, may not be transported on LCV's; and

(c) acceptable travel conditions exist in accordance with hazardous conditions for loads in excess of 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet, and requires LCV authority exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

**R909-2-24. Overweight Divisible Load Provisions.**

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) The width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet high;

(c) All axles weighing more than 10,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide

base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on all axles;

(b) super wide single tires that are 14 inches wide or greater;

(c) not to exceed 10,000 pounds per axle;

(d) the axle, groups of axles, and GVW do not exceed the bridge formula  $W = 500\{LN/(N-1) + 12N+36\}$ ; and

(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.

(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.

(4) A divisible load permit may not be used to transport a non-divisible load.

(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross and bridge limitations do not exceed those specified on the permit.

**R909-2-25. Overweight Non-Divisible Load Provisions.**

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula  $\sim 1.47 \times 500 (LN/N-1 + 12N + 36)$ .

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semi annual trip, or annual trip basis as described in Table 3;

TABLE 3

Single Trip, Semi-Annual Permits allowed up to:

Single Axle	29,000 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow-trucks may purchase a semi-annual, or annual non-divisible overweight permit as specified in Table 3.

(a) Tow-truck loads exceeding the maximum limits in Table 3 shall purchase a single trip permit.

**R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.**

(1) Loads exceeding 125,000 pounds gross, or axle weights in R909-2-24, may only purchase single trip permits.

(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula  $\sim 1.47 \times 500 (LN/N-1 + 12N + 36)$  or in accordance with the bridge table.

(3) 9 feet wide axles are allowed 7.5% more weight than 9 feet wide axles.

(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.

(5) When using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8 foot wide axle group.

(6) All tires shall be in compliance with the manufacturers tire load rating as indicated on the tire side wall.

(7) All STE operations must have an STE profile sheet when the axle limitations specified in Table 3 or bridge table are exceeded.

**R909-2-27. Mobile and Manufactured Homes.**

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5 millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow Vehicles. Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes in excess of 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit in excess of 12 feet wide.

**R909-2-28. Pilot Escort Requirements and Certification Program.**

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations in excess of 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Sections 41-1a-201 and 41-1a-401.

(b) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(c) Trailers may not be towed at any time while in pilot escort operations.

(d) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is required.

(e) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an "OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8 inch high by 1 inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so as to be clearly legible and readable by oncoming traffic at all times; and

(d) the rear pilot escort vehicle shall display its sign so as to be readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for

360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent illumination device approved by the division;

(d) three orange 18 inch high cones;

(e) a flashlight with a minimum 1 1/2 inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;

(i) a fire extinguisher;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack and lug wrench;

(m) a handheld two way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

(a) all officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than \$750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle

operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must be maintained at all times during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of \$750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge such as a department representative or a law enforcement officer;

(b) all documentation for authorized routing and permit conditions is distributed to all appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

**R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.**

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

(a) name and address of entity;

(b) list of instructors;

(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and

(h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the division at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing over-size load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over dimensional loads;

(d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant recertification. The examination shall not be a duplicate of the examination used during the initial certification process and should

be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R-909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in R909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the division deems it necessary to insure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, with the exception of the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. In the event that the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for the purpose of an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

#### **R909-2-30. Farmers, Implements of Husbandry & Agricultural Operations.**

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side when:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet all other divisible load requirements in R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or his employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not in excess of 25 miles per hours, shall at all times be equipped with a slow moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible from a distance of not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

#### **R909-2-31. Snow Plow Operations.**

(1) Blades in excess of 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.

(2) Snow plows with up to 12 feet wide blades may operate without oversize permits, when they are in compliance with:

(a) lights which provide adequate illumination when the blade is in either the up, or down position;

(b) signaling lights shall not be obscured; and

(c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

**R909-2-32. Parade Floats.**

(1) Parade floats are not required to obtain an overweight or oversize permit, but they must meet the following requirements:

(a) all floats must have sufficient proof of insurance;

(b) all floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;

(c) the float driver must have a clear 360 degree visibility;

(d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and

(e) floats in excess of 14 feet in height, must be routed by the division.

**R909-2-33. Transportation of Utility Poles.**

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with single trip, semi-annual or annual permit in accordance with:

(a) oversize load restrictions;

(b) pilot escort requirements;

(c) travel restrictions; and

(d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

(a) Upon company request, the permit may be issued to the truck or truck tractor.

(b) Utility poles exceeding 120 feet shall purchase a single trip, non-divisible oversize permit.

**R909-2-34. Special Mobile Equipment.**

(1) Special mobile equipment or SME refers to vehicles:

(a) not designed or used primarily for the transportation of persons or property;

(b) not designed to operate in traffic; and

(c) only incidentally operated or moved over the highways.

(2) Special mobile equipment exempt from registration includes:

(a) farm tractors; and

(b) off road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway use such as scrapers, loaders, off highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

(a) the distance traveled shall not generally exceed 20 miles;

(b) only daylight operations are authorized and all oversize restrictions apply;

(c) weights must comply with the bridge formula for non-divisible loads;

(d) single axles equipped with single tires shall not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment shall be routed by the division.

(4) Special mobile equipment or SME affidavit. All persons who operate or cause to operate an SME exempt from registration shall submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and all required fields filled in. Affidavits will be available at all ports of entry. Affidavits shall be turned into a port of entry.

(b) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times;

(c) Vehicles that are not special mobile equipment shall register with the Utah State Tax Commission prior to operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

**R909-2-35. Special Truck Equipment.**

(1) The following vehicle configurations are considered special truck equipment:

(a) concrete pumper trucks;

(b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and

(c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversize or overweight permit when exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment shall be carried in the vehicle with the permit, when the axle limitations specified in R909-2-5 Table 2 or actual bridge or gross are exceeded.

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

**R909-2-36. Port-of-Entry By-Pass Permit Provisions.**

(1) A temporary by-pass permit may be issued to accommodate the multi-trip, highway transportation needs to motor carriers who meet the following criteria.

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle has to be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

BASIC	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary in order to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply yearly.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or temporarily suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied, the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

**R909-2-37. Annual Review of Permit Regulations and Conditions.**

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in April of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be incorporated into this rule.

**KEY: trucks, safety regulations, permits**

**Date of Enactment or Last Substantive Amendment:** [November 21, 2011]2012

**Authorizing, and Implemented or Interpreted Law:** [72-1-102; 72-1-201; 72-7-406; 72-7-408; 72-9-303; 72-9-701; 72-9-702]41-1a-102; 41-1a-231; 41-1a-1206; 72-7-402; 72-7-404; 72-7-407; 72-9-301; 72-9-502

**Transportation, Motor Carrier, Ports Of  
Entry  
R912-6  
Ports-of-Entry By-Pass Permit  
Provisions**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 36864

FILED: 09/27/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because its provisions will be included in the repealed and reenacted Rule R909-2, Utah Size and Weight Rule. (DAR NOTE: The proposed

repeal and reenactment of Rule R909-2 is under DAR No. 36863 in this issue, October 15, 2012, of the Bulletin.)

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-9-301 and Section 72-9-502

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the provisions of this rule are only being moved to Rule R909-2.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the provisions of this rule are only being moved to Rule R909-2.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the provisions of this rule are only being moved to Rule R909-2.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the provisions of this rule are only being moved to Rule R909-2.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated compliance cost for affected persons because the provisions of this rule are only being moved to Rule R909-2.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impact on businesses because the provisions of this rule are only being moved to Rule R909-2.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 TRANSPORTATION  
 MOTOR CARRIER, PORTS OF ENTRY  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY, UT 84119-5998  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cnewman@utah.gov](mailto:cnewman@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012**

**THIS RULE MAY BECOME EFFECTIVE ON:** 11/21/2012

**AUTHORIZED BY:** John Njord, Executive Director

**~~[R912. Transportation, Motor Carrier, Ports-of-Entry.~~**

**~~R912-6. Ports-of-Entry By-Pass Permit Provisions:~~**

**~~R912-6-1. Purpose.~~**

~~———— This rule establishes procedures that allow the Motor Carrier Division to issue a temporary port-of-entry by-pass permit to accommodate multi-trip, highway transportation needs.~~

**~~R912-6-2. Definitions.~~**

~~———— Except for the following, this rule uses the same definitions as those listed in R909-16:~~

~~———— (1) "Commercial Vehicle" means a motor vehicle, vehicle, trailer, or semi-trailer used or maintained for business, compensation, or profit to transport passengers or property on a highway if the commercial vehicle:~~

~~———— (a) has a manufacturer's gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;~~

~~———— (b) is designed to transport more than 15 passengers, including the driver; or~~

~~———— (c) is used in the transportation of hazardous materials found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C;~~

~~———— (2) "Intrastate" means transportation movement entirely within the state.~~

~~———— (3) "Multi-Trip" means two or more daily or weekly trips in the proximity of a port-of-entry.~~

**~~R912-6-3. Port-of-Entry By-Pass Permits:~~**

~~———— (1) Pursuant to Substitute Senate Bill 144, Motor Vehicle Ports-of-Entry, enacted during the 2005 General Session of the Legislature, by-pass privileges will be granted to a motor carrier for multiple motor vehicles. Deals will be issued to individual vehicles within a motor carrier's fleet.~~

~~———— (2) By-pass permit privileges expire one year after they are issued.~~

~~———— (3) Motor Carriers shall meet the "Multi-Trip" definition to receive and maintain by-pass privileges. A motor carrier may be excused from this requirement on a case-by-case basis if the carrier does not meet the "Multi-Trip" definition but is able to demonstrate to the Department that denial of a permit will cause a hardship if the vehicle has to be diverted to a port-of-entry. A Motor Carrier may appeal a denial pursuant to R912-6-7.~~

~~———— (4) By-pass privileges may be granted to carriers traversing multiple ports-of-entry within the same route.~~

~~———— (5) Unless otherwise authorized by the Department, Motor Carriers that have by-pass privilege must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, and unit-specific information.~~

~~———— (6) The Department will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.~~

**~~R912-6-4. Enrollment Criteria:~~**

~~———— A Motor Carrier requesting a port-of-entry by-pass permit from the Department shall have an overall company safety fitness rating of satisfactory standing, as set forth under R909-16.~~

**R912-6-5. Assignment of Provisional Standing.**

~~The Department may issue provisional standing to a Motor Carrier for which there is insufficient data to determine compliance with the Safety Standard or if the Motor Carrier has not received a safety rating in accordance with the Federal Motor Carrier Safety Regulations, Title 49 Part 385.~~

**R912-6-6. Application Process.**

~~(1) Motor Carriers requesting a port-of-entry by-pass annual permit shall make application to the Motor Carrier Division by contacting the Central Permitting Office at (801) 965-4880.~~

~~(2) Motor Carriers are required to submit routing information including point of origin, destination, and routine routes traveled.~~

~~(3) Carriers denied by-pass privileges by the Department for reasons other than conditions constituting a satisfactory standing, such as proximity, travel pattern, number of trips, etc., may appeal the Department's decision by providing additional documentation as to why the by-pass privilege should be authorized.~~

**R912-6-7. Steering Committee - Appeal Process.**

~~When an application for a by-pass permit is denied for reasons other than the conditions set forth in R912-6-3, the Motor Carrier may file an appeal. The appeals shall be handled by a steering committee created by the Motor Carrier Division. The steering committee shall have the powers granted to the Deputy Director in R907-1-3 for appeals from other Motor Carrier Division administrative actions. This committee's decision, if adopted by the Director of the Motor Carrier Division, will be considered a final agency order under the Utah Administrative Procedures Act.~~

**R912-6-8. Suspensions and Revocations of Port-of-Entry By-Pass Permit.**

~~The Department may suspend or revoke the Motor Carrier's by-pass permit if the Motor Carrier fails to meet conditions set forth under R909-16-3. If a Motor Carrier is denied by-pass privileges as a result of the assessment of an unsatisfactory standing issued by the Department, the Motor Carrier must appeal that standing assessment pursuant to R909-16-11.~~

**R912-6-9. Audits.**

~~As a condition of receiving a by-pass permit, a Motor Carrier is subject to compliance reviews, safety assessments, and inspections as the Department considers necessary in order to carry out state and federal law, including Utah Code Ann. Section 72-9-301.~~

**KEY: motor carrier, permits, ports of entry, trucks**

**Date of Enactment or Last Substantive Amendment: June 27, 2005**

**Notice of Continuation: May 26, 2010**

**Authorizing, and Implemented or Interpreted Law: 72-9-301; 72-9-502]**

## Transportation, Motor Carrier, Ports Of Entry

### R912-8

### Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 36865

FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being repealed because its provisions will be included in the repealed and reenacted Rule R909-2, Utah Size and Weight Rule. (DAR NOTE: The proposed repeal and reenactment of Rule R909-2 is under DAR No. 36863 in this issue, October 15, 2012, of the Bulletin.)

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201 and Section 72-7-404 and Section 72-7-406

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the provisions of this rule are only being moved to Rule R909-2.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the provisions of this rule are only being moved to Rule R909-2.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the provisions of this rule are only being moved to Rule R909-2.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to small businesses, businesses, or local government entities because the provisions of this rule are only being moved to Rule R909-2.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated compliance cost for affected persons because the provisions of this rule are only being moved to Rule R909-2.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impact on businesses because the provisions of this rule are only being moved to Rule R909-2.

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

TRANSPORTATION  
MOTOR CARRIER, PORTS OF ENTRY  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: John Njord, Executive Director

~~**R912. Transportation, Motor Carrier, Ports of Entry.**~~

~~**R912-8. Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah.**~~

~~**R912-8-1. Authority.**~~

~~This rule is authorized by Sections 72-7-404, 72-7-406, and 72-1-201.~~

~~**R912-8-2. Definitions.**~~

~~(1) "Axle Group" means any axles on a vehicle that are within eight feet of each other.~~

~~(2) "Bridge Formula" is defined in Section 72-7-404.~~

~~(3) "Fixed Axle" means an axle that is not steerable, self steering or retractable.~~

~~(4) "Legal Weight" is defined in Section 72-7-404.~~

~~(5) "Load Rating" means the maximum load that the equipment is rated to carry as designated by the Federal Motor Carrier standards.~~

~~(6) "Variable Load Suspension (VLS) Axle" means an axle that can be loaded mechanically to various capacities.~~

~~(7) "Retractable Axles" means an axle that can be lifted from the pavement surface, but cannot mechanically vary its weight-bearing capability.~~

~~(8) "Tire Scrubbing" means side movement of the tire associated with the turning movement of a vehicle.~~

~~(9) "Quad Axle Group" means a group of four consecutive fixed axles.~~

~~**R912-8-3. Purpose.**~~

~~(1) The purpose of this rule is to promote safety and reduce the pavement damage resulting from operating with underrated tires or suspensions and/or retractable or VLS axles. Some trucking firms have utilized underrated tires, axles and suspensions systems which cannot safely and practically support excess weight, and adjacent axles become overloaded. Fixed axles scrub sideways to some degree when a vehicle is operated through a turning movement. This scrubbing is damaging to the pavement~~

~~surface. The degree to which a tire scrubs is related to the distance between the extreme fixed axles in an axle group. Quad axle groups increase tire scrubbing considerably because of the extreme axle spacings involved.~~

~~(2) Some companies utilize retractable VLS axles to improve the load-carrying flexibility of their vehicles. These axles increase the weight that the vehicle can legally carry, while providing needed maneuverability at loading and unloading sites. Concrete and construction companies have used these axles on their vehicles to transport materials to construction sites, causing a minimum of pavement and bridge damage. These axles can then be retracted or "unloaded" to allow a driver to more easily back up or steer. Since they can be misused and abused, it is in the best interest of safety and infrastructure preservation to establish and enforce specific operating requirements for vehicles so equipped in the state of Utah.~~

~~**R912-8-4. Provisions.**~~

~~(1) Vehicles with a gross vehicle rating exceeding 26,000 pounds are limited as follows:~~

~~(A) Axles shall not exceed their designed load capacity. Documentation of axle capacity, such as an attached data plate or written certification from a vendor, shall be available with each vehicle.~~

~~(B) Single tires shall be a minimum size of 8.25 x 20. All tires shall meet Federal Motor Carrier Safety load rating requirements.~~

~~(C) No more than three fixed axles shall be allowed in any group. Retractable or VLS axles installed after January 1990 shall be self-steering on power units and when augmenting a tridem group on trailers. Non-divisible loads may be exempt from these restrictions with written approval from the Utah Department of Transportation (UDOT).~~

~~(D) No axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements.~~

~~(E) Controls for raising and lowering retractable or VLS axles may be located in the cab of the power unit, but the controls regulating pressure to such axles shall be positioned outside the cab so as to be inaccessible to the driver when the vehicle is in motion.~~

~~(F) Tires, axles or suspension systems which are unusual or which vary from these requirements must be reviewed and approved by UDOT prior to operation.~~

~~**KEY: transportation, weight, ratings, permits**~~

~~**Date of Enactment or Last Substantive Amendment: June 22, 2006**~~

~~**Notice of Continuation: February 17, 2011**~~

~~**Authorizing, and Implemented or Interpreted Law: 72-7-404; 72-7-406; 72-1-201]**~~

Transportation, Motor Carrier, Ports Of  
Entry

**R912-10**

Requirements for Pilot/Escort Qualified  
Training and Certification Programs

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 36866

FILED: 09/27/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because its provisions will be included in the repealed and reenacted Rule R909-2, Utah Size and Weight Rule. (DAR NOTE: The proposed repeal and reenactment of Rule R909-2 is under DAR No. 36863 in this issue, October 15, 2012, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Section 72-7-406

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because the provisions of this rule are only being moved to Rule R909-2.
- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because the provisions of this rule are only being moved to Rule R909-2.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because the provisions of this rule are only being moved to Rule R909-2.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the provisions of this rule are only being moved to Rule R909-2.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated compliance cost for affected persons because the provisions of this rule are only being moved to Rule R909-2.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the provisions of this rule are only being moved to Rule R909-2.

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 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cnewman@utah.gov](mailto:cnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: John Njord, Executive Director

~~[R912. Transportation, Motor Carrier, Ports of Entry.  
 R912-10. Requirements for Pilot/Escort Qualified Training and Certification Programs.~~

~~R912-10-1. Purpose.~~

~~\_\_\_\_\_ This rule establishes standards and procedures for third-party instructors to train and certify Utah pilot/escort drivers for and on behalf of the Utah Department of Transportation.~~

~~R912-10-2. Definitions.~~

~~\_\_\_\_\_ "Department" means the Utah Department of Transportation.~~

~~\_\_\_\_\_ "Division" means the Motor Carrier Division.~~

~~R912-10-3. Application Process.~~

~~\_\_\_\_\_ (1) Application to become a third-party pilot/escort trainer/instructor shall be made on a form furnished by the Division, and shall include the following:~~

- ~~\_\_\_\_\_ (a) Name and address of entity/institution.~~
- ~~\_\_\_\_\_ (b) List of instructors.~~
- ~~\_\_\_\_\_ (c) Resumes of each instructor outlining related experience in the pilot/escort, heavy haul, academia, or commercial vehicle enforcement fields.~~
- ~~\_\_\_\_\_ (d) A copy of entity/institution's business license.~~
- ~~\_\_\_\_\_ (e) Sample of digital image certification card that will be issued to students upon completion of the course.~~
- ~~\_\_\_\_\_ (f) Sample of "Flagger" certification card that will issued to students upon completion of the course.~~
- ~~\_\_\_\_\_ (g) Procedural guidelines that outlines security measures implemented to safeguard student's personal information.~~
- ~~\_\_\_\_\_ (h) Copies of all course curriculum and testing materials. These materials will be reviewed and approved by the Division to ensure that all requirements are met. An overview of course curriculum requirements are outlined in R912-10-4.~~

~~\_\_\_\_\_ (i) Entity/institution must document procedures that will be followed to verify student's Motor Vehicle Record (MVR) certification and the collection of insurance forms submitted by the applicant at the time of examination.~~

~~\_\_\_\_\_ (i) Students shall be notified either by mail prior to class or when they call in to sign up that they will need to bring the MVR and proof of insurance with them to the class.~~

~~\_\_\_\_\_ (ii) Students will not be certified until this documentation is provided to the entity/institution.~~

~~\_\_\_\_\_ (iii) Entity/institution shall only accept an original MVR certification that is current within 30 days of classroom instruction and proof of insurance from insurance provider.~~

~~R912-10-4. Course Curriculum Requirements.~~

~~\_\_\_\_\_ (1) An extensive course curriculum description and requirements are outlined in the application package that can be obtain by contacting the Division at (801) 965-4508. Course~~

curriculum to certify pilot/escort drivers to operate in Utah must cover the following topics:

- ~~(a) Department rules and regulations governing over-size load movements.~~
- ~~(b) Pilot/escort operations.~~
- ~~(c) Flagging maneuvers for over-dimensional loads.~~
- ~~(d) Oversize/Overweight load movement, coordination, planning and communication requirements/best practices.~~
- ~~(e) Pilot/escort vehicle positioning and situational training.~~
- ~~(f) Rail grade crossing safety.~~
- ~~(g) Routing techniques, including pre-trip surveys.~~
- ~~(h) Insurance coverage requirements and liability issues.~~

#### **R912-10-5. Testing Procedures.**

Testing materials shall be submitted to the Division for approval. Tests should be structured in accordance with the following guidelines:

- ~~(1) Minimum of 40 question exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course, structured as follows:
 
  - ~~(a) 12 Fill in the blank;~~
  - ~~(b) 12 Multiple choice;~~
  - ~~(c) 12 True/False~~
  - ~~(d) 1 - 6 questions dealing with safety equipment;~~
  - ~~(e) 1 - 4 questions dealing with the duties of pilot/escort drivers;~~
  - ~~(f) 1 - 6 questions dealing maintenance of equipment;~~
  - ~~(g) 1 - 6 questions dealing with items that must be collected in a route survey.~~~~
- ~~(2) Grading of examinations – Provide explanation of how this will be administered.~~
- ~~(3) Students must pass with a 80% score to be certified.~~
- ~~(4) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.~~
- ~~(5) It will be the responsibility of the entity/institution to provide a list of students that attended the course and the corresponding grade to the Department, or approved entity, within 72 hours of the completion of the course.~~

#### **R912-10-6. Applicant Recertification Procedures.**

- ~~(1) Entity/institution shall provide means in which an individual may be re-certified either mail or via Internet.~~
- ~~(2) Entity/institution shall submit written procedures documenting the process for the proctoring of the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should be constructed as to educate student on updates pertaining to pilot/certification and legal requirements.~~
- ~~(3) A copy of the individual's resume proctoring the exam must be submitted to the Division. Documentation must be provided to indicate the process in which the individual proctoring the exam ability to obtain verify applicant's Motor Vehicle Record (MVR) check and the collection of insurance forms submitted by the applicant at the time of re-certification.~~
- ~~(4) Re-certification tests shall be structured as outlined in R912-10-5 with the exception, that the entity replace R912-10-5(1) (d), (e), (f) and (g), with four essay questions.~~

~~(5) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.~~

~~(6) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.~~

~~(7) It will be the responsibility of the entity/institution to provide a list of applicants that have successfully re-certified along with the corresponding grade to the Department, or approved entity, within 72 hours of the date of re-certification.~~

#### **R912-10-8. Training Costs.**

~~(1) Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity/institution. These costs may be passed on to the students for certification in the form of tuition determined by the training entity/institution based on business model and expenses.~~

~~(2) Cost proposal and course fees must be submitted to the Department for approval as part of the application process.~~

#### **R912-10-9. Suspensions and Revocations of Pilot/Escort Training Entities/Institutions.**

~~The Department may suspend or revoke the entity/institution's ability to provide services if the entity/institution fails to meet conditions and requirements set forth under this rule. If an entity/institution has its authority to provide services revoked or suspended, the entity/institution may appeal the decision.~~

#### **R912-10-10. Steering Committee. Appeal Process.**

~~When an entity/institution's authority is revoked or suspended, the entity/institution may file an appeal. The appeals shall be handled by a steering committee created by the Division. The steering committee shall have the powers granted to the Department's Deputy Director in R907-1-3 for appeals from other Division administrative actions. This committee's decision, if adopted by the Director of the Division, will be considered a final agency order under the Utah Administrative Act.~~

#### **R912-10-11. Annual review of Rates, Fees and Certification Process.**

~~The Division has the right to review rates, fees, procedures, and the certification process established by the entity/institution whenever the Division deems it necessary to insure compliance with this rule.~~

#### **R912-10-12. Record Retention and Data Management Requirements.**

~~(1) Authorized Pilot/Escort Qualified Training and Certification Entities/Institutions shall maintain the following certification and recertification records for a period of eight years:~~

- ~~(a) Student's name, address, and contact information.~~
- ~~(b) Driver's license number, original MVR and original proof of insurance information from insurance provider.~~
- ~~(c) Copy of each students written exam.~~
- ~~(d) Digital copy of certification/flagger card, including photo.~~

- ~~(e) Training and expiration dates on all students.~~
- ~~(f) Recertification and expiration dates.~~
- ~~(g) List of instructors/proctors/administrators, copy of their resumes and date of classroom instruction and/or recertification dates providing services.~~
- ~~(2) Records may be scanned and kept electronically provided entity/institution has necessary data backup and retrieval procedures~~
- ~~(3) The Division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the Division deems it necessary to insure compliance with this rule.~~
- ~~(4) The loss, mutilation or destruction of any records which an entity/institution is required to maintain, must be immediately reported by the entity/institution by affidavit stating:~~
  - ~~(a) The date such records were lost, mutilated, or destroyed; and~~
  - ~~(b) The circumstances involving such loss, mutilation, or destruction.~~
- ~~(5) All records must be retained by the entity/institution for eight years, with the exception of the computerized file there of, which is to be kept permanently, during which time they shall be subject to inspection by the Division during reasonable business hours. In the event that the entity/institution goes out of business, the permanent record shall be submitted by the entity/institution to the Division.~~
- ~~(6) Upon completion of each training course or recertification a list of each student shall be electronically uploaded to the Division or it's authorized agent within 72 hours of completion of course. Authorized entity/institution's will be provided additional information regarding upload and data set requirements.~~
- ~~(7) All records, including computerized records, must be provided to the Division when requested for the purpose of an audit or review of the entities/institution's records. Failure to provide all records as requested by the Division is a violation of this rule.~~
- ~~(8) Entity/Institution's shall maintain accurate, up to date records. Failure to do so is a violation of this rule.~~

**R912-10-13. Consumer Protection Information.**

~~The Division shall make consumer protection information available to the public that may use the services to obtain pilot/escort vehicle certification. To obtain such information, the public can call the Division at (801) 965-4508.~~

~~**KEY: permitted vehicles, trucks, pilot/escort vehicles**  
**Date of Enactment or Last Substantive Amendment: July 18, 2005**  
**Notice of Continuation: July 14, 2010**  
**Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-406]**~~

Transportation, Motor Carrier, Ports Of  
 Entry  
**R912-16**  
 Special Mobile Equipment

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 36867  
 FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being repealed because its provisions will be included in the repealed and reenacted Rule R909-2, Utah Size and Weight Rule. (DAR NOTE: The proposed repeal and reenactment of Rule R909-2 is under DAR No. 36863 in this issue, October 15, 2012, of the Bulletin.)

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-1a-231 and Section 72-9-201

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the State budget because the provisions of this rule are only being moved to Rule R909-2.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government budget because the provisions of this rule are only being moved to Rule R909-2.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the provisions of this rule are only being moved to Rule R909-2.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the provisions of this rule are only being moved to Rule R909-2.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated compliance cost for affected persons because the provisions of this rule are only being moved to Rule R909-2.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impacts on businesses because the provisions of this rule are only being moved to Rule R909-2.

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

TRANSPORTATION  
 MOTOR CARRIER, PORTS OF ENTRY  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY, UT 84119-5998  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: John Njord, Executive Director

**[R912. Transportation, Motor Carrier, Ports of Entry.**

**R912-16. Special Mobile Equipment.**

**R912-16-1. Authority.**

\_\_\_\_\_ This rule is authorized by Section 41-1a-231.

**R912-16-2. Purpose.**

\_\_\_\_\_ The purpose of this rule is to provide registration exceptions for special mobile equipment.

**R912-16-3. Definitions.**

\_\_\_\_\_ (1) Special Mobile Equipment exempt from registration include:

\_\_\_\_\_ (a) Vehicles not designed to be operated or moved over the highways;

\_\_\_\_\_ (b) Farm tractors;

\_\_\_\_\_ (c) Off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, scrapers, tractors and trenchers; and

\_\_\_\_\_ (d) Ditch digging apparatus.

\_\_\_\_\_ (2) The following are no longer classified as special mobile equipment but are eligible for one-half exemption of fees required under Section 41-1a-1206:

\_\_\_\_\_ (a) Concrete Pumps;

\_\_\_\_\_ (b) Cranes performing crane services with a crane lift capacity of five tons or more; and

\_\_\_\_\_ (c) Well boring trucks.

**R912-16-4. Special Mobile Equipment Affidavit.**

\_\_\_\_\_ (1) All persons who operate or cause to be operated a special mobile equipment exempt from registration shall submit a completed special mobile equipment affidavit to the Department of Transportation, Motor Carrier Division.

\_\_\_\_\_ (a) To be deemed complete an affidavit must be on the form provided by the Motor Carrier Division and all required fields filled in. Affidavits will be available at all Ports of Entry and State Tax Commission, Department of Motor Vehicles offices. Affidavits will be turned into a Port of Entry.

\_\_\_\_\_ (b) The decision as to whether the vehicle is found to be a special mobile equipment exempt from registration, or not to be special mobile equipment, will be so noted on the affidavit.

\_\_\_\_\_ (c) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times.

\_\_\_\_\_ (d) Vehicles found to not be special mobile equipment shall register with the State Tax Commission prior to operating the vehicle on a public highway.

\_\_\_\_\_ (e) Upon receipt of a denial of special mobile equipment, if the owner/operator wishes to appeal the decision of the Department, a petition may be filed with the Utah Department of Transportation, Motor Carrier Division, within 30 days.

\_\_\_\_\_ (f) A response to an appeal from the Department will be made in writing within 30 days.

**KEY:** trucks, safety

**Date of Enactment or Last Substantive Amendment:** August 16, 2000

**Notice of Continuation:** August 12, 2010

**Authorizing, and Implemented or Interpreted Law:** 41-1a-231; 72-9-201]

Workforce Services, Employment  
Development  
**R986-200**  
Family Employment Program

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36868

FILED: 09/27/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify language.

**SUMMARY OF THE RULE OR CHANGE:** In Section R986-200-205, the division is clarifying the provision regarding absent household members. If the member is required under other rules to participate in an employment plan those absent household members must be counted in the household. A provision has been added in that subsection that provides if all adults are temporarily absent the dependent child/ren must be left in the care of an adult. In Section R986-200-216, the division has taken out three redundant and confusing words. In Section R986-200-217, the division has clarified the language about diversion payments; since Section R986-200-216 provides that a household can only receive one diversion payment in a 12-month period the language in this subsection is no longer needed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This applies to federally-funded programs 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 the local government.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs to persons other than small businesses, businesses or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

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 11/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012

AUTHORIZED BY: Jon Pierpont, Acting Executive Director

**R986. Workforce Services, Employment Development.  
 R986-200. Family Employment Program.  
 R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.**

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included[;]. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the

household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

#### **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 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, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(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.

#### **R986-200-217. Time Limits.**

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data

available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) ~~[the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month]~~diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless

the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

**KEY: family employment program**

**Date of Enactment or Last Substantive Amendment: ~~August 1, 2012~~**

**Notice of Continuation: September 8, 2010**

**Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.**

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**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive public comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

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 November 14, 2012.

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 February 12, 2013, 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.

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**The Changes in Proposed Rules Begin on the Following Page**

**Insurance, Administration**  
**R590-162**  
**Actuarial Opinion and Memorandum**  
**Rule**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 36215  
 FILED: 09/25/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended as a result of comments received during the previous comment period.

**SUMMARY OF THE RULE OR CHANGE:** Two new sections have been added to the rule, Exemptions and Severability. Also, in Subsection R590-162-5(E)(1), the examples are being eliminated, and the change to Subsection R590-162-5(E)(2) deletes references to various subsections in Part 5 of Chapter 17 to the reference of all of Part 5. The Exemption Section offers a life insurance company the opportunity to request exemption from the annual requirement to provide the department with an actuarial opinion. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the June 1, 2012, issue of the Utah State Bulletin, on page 72. 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-17-503

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no cost or savings to the department or the state as a result of the exemption. The department's financial analyst will have to review either the actuarial opinion or the exemption request. The department does not expect to receive any more than two or three requests for exemption. There is no fee involved with the exemption or the opinion.
- ◆ **LOCAL GOVERNMENTS:** The changes to this rule will have no impact on local governments since it deals solely with the relationship between the department and their licensees.
- ◆ **SMALL BUSINESSES:** The exemption is not based on size but on the nature of the life insurance company's assets and liabilities. Companies that could be exempted are those with almost no liabilities or assets. In such a situation the time it would take to complete an Actuarial Opinion and a Request for Exemption would be about the same. The only difference

is that an actuary is not required to sign the Request for Exemption resulting in a minimal cost savings to the insurer.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The exemption is not based on size but on the nature of life insurance company's assets and liabilities. Companies that could be exempted are those with almost no liabilities or assets. In such a situation the time it would take to complete an Actuarial Opinion and a Request for Exemption would be about the same. The only difference is that an actuary is not required to sign the Request for Exemption resulting in a minimal cost savings to the insurer.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The exemption is not based on size but on the nature of life insurance company's assets and liabilities. Companies that could be exempted are those with almost no liabilities or assets. In such a situation the time it would take to complete an Actuarial Opinion and a Request for Exemption would be about the same. The only difference is that an actuary is not required to sign the Request for Exemption resulting in a minimal cost savings to the insurer.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no significant impact as a result of these changes. The changes simply offer an option to the filing of an actuarial Opinion.

**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](mailto:jwhitby@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2012**

**AUTHORIZED BY: Jilene Whitby, Information Specialist**

**R590. Insurance, Administration.**  
**R590-162. Actuarial Opinion and Memorandum Rule.**  
**R590-162-1. Purpose.**

The purpose of this rule is to prescribe:

A. Requirements for statements of actuarial opinion which are to be submitted in accordance with Section 31A-17-503, and for memoranda in support thereof;

B. Guidance as to the meaning of "adequacy of reserves;" and

C. Rules applicable to the appointment of an appointed actuary.

**R590-162-2. Authority.**

This rule is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Utah under [~~Section 31A-17 Part 5. This rule will take effect for annual statements for the year 2014~~] Title 31A, Chapter 17, Part 5.

**R590-162-3. Scope.**

This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or disability insurance business in this State.

This rule shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset adequacy analysis and developing the actuarial opinion and supporting memoranda, consistent with applicable actuarial standards of practice. However, the commissioner shall have the authority to specify the methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This rule shall be applicable to all annual statements filed with the office of the commissioner after the effective date of this rule. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 6 of this rule, and a memorandum in support thereof in accordance with Section 7 of this rule, shall be required each year.

**R590-162-4. Definitions.**

A. "Actuarial Opinion" means the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section 6 of this rule and with applicable Actuarial Standards of Practice.

B. "Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

C. "Annual Statement" means that statement required by Section 31A-4-113 to be filed by the company with the office of the commissioner annually.

D. "Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Subsection 5C of this rule to provide the actuarial opinion and supporting memorandum as required by 31A-17-503.

E. "Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Subsection 5D of this rule. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

F. "Commissioner" means the Insurance Commissioner of this State.

G. "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

[F]H. "Qualified Actuary" means any individual who meets the requirements set forth in Subsection 5B of this rule.

**R590-162-5. General Requirements.**

A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 6 of this rule.

(2) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(3) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

B. Qualified Actuary

A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries;

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(3) Is familiar with the valuation requirements applicable to life and health insurance companies;

(4) Has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, the Utah Code or other law in the course of his or her dealings as a qualified actuary;

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under [Paragraph] Subsection (4) above.

C. Appointed Actuary

An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the [S]statement of [A]actuarial [O]pinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title, and,

in the case of a consulting actuary, the name of the firm and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Subsection 5B of this rule. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Subsection 5B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

#### D. Standards for Asset Adequacy Analysis

The asset adequacy analysis required by this rule:

(1) [S] shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with this rule; and

(2) [S] shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

#### E. Liabilities to be Covered

(1) Under authority of Section 31A-17-503, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued~~[-, e.g., reserves of Exhibits 8, 9 and 10, and claim liabilities in Exhibit 11, Part I and equivalent items in the separate account statement or statements].~~

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in ~~[Sections 31A-17-505(1), 31A-17-505(1)(a), 31A-17-511, 31A-17-512, and 31A-17-513,]~~ Title 31A, Chapter 17, Part 5 the company shall establish such additional reserve.

(3) Additional reserves established under ~~[Paragraphs]~~ Subsection (2) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

### **R590-162-6. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.**

#### A. General Description

(1) The statement of actuarial opinion submitted in accordance with this section shall consist of:

(1)a [A] a paragraph identifying the appointed actuary and his or her qualifications as specified in Subsection 6B(1) of this rule;

(2)b [A] a scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, as specified in Subsection 6B(2) of this rule, and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

(3)c [A] a reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as specified in Subsection 6B(3) of this rule, supported by a statement of each such expert in the form prescribed by Subsection 6E of this rule; and

(4)d [A] an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, as specified in Subsection 6B(6) of this rule.

(5) One or more additional paragraphs will be needed in individual company cases as follows:

(a) [F] if the appointed actuary considers it necessary to state a qualification of the opinion;

(b) [F] if the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

(c) [F] if the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis[-];

(d) [F] if the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion[-];

(e) [F] if the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release[-]; or

(f) [F] if the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

#### B. Recommended Language

The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the

Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20( ). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios or certain critical aspects of the analysis performed in conjunction with forming my opinion), as certified in the attached statement I have reviewed the information relied upon for reasonableness."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Subsection 6E of this rule.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual statement."

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company or a third party, the reliance paragraph should include a statement such as:

"In forming my opinion on (specify types of reserves) I have relied upon data prepared by (name and title of company officer certifying in-force records or other data) as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

Such a statement of reliance must be accompanied by a statement by each person relied upon of the form prescribed by Subsection 6E of this rule.

(6) The opinion paragraph should include the following:

TABLE

(a) "In my opinion the reserves and related actuarial values concerning the statement items identified above:

[+] (i) [A] are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

[+] (ii) [A] are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

[+] (iii) [M] meet the requirements of the Insurance Law and rule of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed[-];

[+] (iv) [A] are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

[+] (v) [I] include provision for all actuarial reserves and related statement items which ought to be established[-];"

(b) "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company[-];" [~~At the discretion of the commissioner, this language may be omitted for an opinion filed on behalf of a company doing business only in this State and in no other state.~~]

(c) "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion[-];" and

(d) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion[-];"

or  
"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:" (Describe the change or changes.)

"The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis."

.....  
"Signature of Appointed Actuary

.....  
Address of Appointed Actuary

.....  
Telephone Number of Appointed Actuary

.....  
Date"

C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 6.

D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then the actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

#### E. Reliance on Data Furnished by Other Persons

If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to the reliance.

In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

#### F. Alternate Option

(1) As an alternative to the requirements of Subsection B(6)(e)(a)(iii) of this rule, the appointed actuary may state that the reserves and related actuarial values "meet the requirements of the Insurance Law and rule of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the laws of the state of domicile has been approved by the commissioner and that any conditions required by the commissioner for approval of that request have been met."

(2) To use this alternative, the company shall file a request to do so, along with the justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(3) Notwithstanding the above, the commissioner may reject an opinion based on the laws of the state of domicile and require an opinion based on the laws of this State. If a company is unable to provide the opinion within sixty days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

#### **R590-162-7. Description of Actuarial Memorandum Including an Asset Adequacy Analysis.**

##### A. General

(1) In accordance with Section 31A-17-503, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Subsection 5B of this rule, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of

this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three years.

(5)(a) In accordance with Section 31A-17-503, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the content of which are specified in Subsection C.

(b) Every company domiciled in this state shall submit the regulatory asset adequacy issues summary no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(c) Every foreign company is required to make the regulatory asset adequacy issues summary available to the commissioner upon request.

(d) The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

##### B. Details of the Memorandum Section Documenting Asset Adequacy Analysis.

When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Subsection 5D of this rule and any additional standards under this rule. It shall specify:

(1) [F]or reserves:

(a) [P]roduct descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(b) [S]ource of liability in force;

(c) [R]eserve method and basis;

(d) [I]nvestment reserves;

(e) [R]einsurance arrangements;

(f) [I]dentification of any explicit or implied guarantees made the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

(g) [D]ocumentation of assumptions to test reserves for the following:

(i) [L]apse rates (both base and excess);

(ii) [I]nterest crediting strategy;

(iii) [M]ortality;

(iv) [P]olicyholder dividend strategy;

(v) [C]ompetitor or market interest rate;

- (vi) [A]annuitization rates;
- (vii) [E]commissions and expenses; and
- (viii) [M]morbidity[-];
- (2) [F]for assets:
  - (a) [P]portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
  - (b) [H]investment and disinvestment assumptions;
  - (c) [S]source of asset data;
  - (d) [A]asset valuation bases; and
  - (e) [D]documentation of assumptions made for:
    - (i) [D]default costs;
    - (ii) [B]bond call function;
    - (iii) [M]mortgage prepayment function;
    - (iv) [D]determining market value for assets sold due to disinvestment strategy; and
    - (v) [D]determining yield on assets acquired through the investment strategy[-];
- (3) [F]for the analysis basis:
  - (a) [M]methodology;
  - (b) [R]rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;
  - (c) [R]rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);
  - (d) [E]criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and
  - (e) [E]effect of federal income taxes, reinsurance and other relevant factors[-];
- (4) [S]summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;
- (5) [S]summary of Results; and
- (6) [E]conclusions.

C. Details of the Regulatory Asset Adequacy Summary

- (1) The regulatory asset adequacy issues summary shall include:
  - (a) [D]descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;
  - (b) [F]the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

- (c) [F]the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;
- (d) [E]comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserve during one or more interim periods;
- (e) [F]the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each scenario tested; and
- (f) [W]whether the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

D. Documentation

The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

**R590-162-8. Exemptions.**

A. Unless ordered by the commissioner, a company that is under supervision, rehabilitation, or liquidation is exempt from the requirements of this rule.

B.(1) At the discretion of the commissioner, a company domiciled in this State and doing business only in this State may submit an opinion without the statement required under R590-162-6(B)(6)(b).

(2) If the commissioner grants an exemption under Subsection B(1), the company shall be exempt from preparing and submitting the RAAIS document required under R590-162-7(A)(5).

C.(1) A company domiciled in this State, and otherwise subject to the requirements of this rule, may apply to the commissioner for an exemption from:

(a) the requirement to submit an actuarial opinion required under R590-162-5(A)(1);

(b) the requirement to include within its actuarial opinion the statement required under R590-162-6(B)(6)(b); or

(c) the requirement to prepare and submit the RAAIS document required under R590-162-7(A)(5).

(2) A company seeking an exemption under Subsection C(1) shall:

(a) submit a written request for an exemption no later than November 1 of the year for which the exemption is sought; and

(b) provide a written explanation and supporting documents, if any, explaining how complying with the requirement for which an exemption is sought would not enhance the department's understanding of the financial position of the company and, therefore, be an unnecessary burden on the company.

**R590-162-9. Severability.**

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment: 2012**

**Notice of Continuation: October 30, 2008**

**Authorizing, Implemented or Interpreted Law: 31A-17-503**

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**End of the Notices of Changes in Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the 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.

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## Administrative Services, Facilities Construction and Management **R23-12** Building Code Appeals Process

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36806  
FILED: 09/19/2012

### 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: In accordance with Subsection 58-56-8(2), the rule establishes procedures for the appeal of decisions made by the Building Official in regards to the application and interpretation of building codes. The statutory provisions governing the application and enforcement of building codes with state facilities are contained in Title 58, Chapter 56, and in Section 63A-5-206. The State Building Board's authority to adopt rules for the Division are contained in Subsection 63A-5-103(1)(e).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule so the public will know the policy and procedures for the appeal of decisions made by the Building Official in regards to the application and interpretation of building codes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
ROOM 4110 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

### DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at [abachman@utah.gov](mailto:abachman@utah.gov)
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at [cniederhauser@utah.gov](mailto:cniederhauser@utah.gov)
- ◆ Chiarina Glead by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at [cgleed@utah.gov](mailto:cgleed@utah.gov)
- ◆ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at [phanderson@utah.gov](mailto:phanderson@utah.gov)

AUTHORIZED BY: D. Gregg Buxton, Director

EFFECTIVE: 09/19/2012

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## Commerce, Corporations and Commercial Code **R154-1** Central Filing System for Agriculture Product Liens

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36857  
FILED: 09/27/2012

**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: Utah Division of Corporations and Commercial Code is the system operator for the central filing system masterlist per 9 CFR Ch II part 205 where the notice of agricultural liens is filed and the Division provides a masterlist of those liens.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments associated with this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division is still the system operator of the central filing system. Therefore, this rule should be continued.

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

COMMERCE  
CORPORATIONS AND COMMERCIAL CODE  
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:  
♦ Kathy Berg by phone at 801-530-6216, by FAX at 801-530-6438, or by Internet E-mail at [kberg@utah.gov](mailto:kberg@utah.gov)

AUTHORIZED BY: Kathy Berg, Director

EFFECTIVE: 09/27/2012

**Financial Institutions, Administration  
R331-17**

**Publication and Disclosure of  
Acquisition of Control, Merger, or  
Consolidation Applications to the  
Department of Financial Institutions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36847  
FILED: 09/24/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(5) authorizes the commissioner to grant applications of approval for new institutions, branches, relocations, mergers, consolidations, changes of control, and other applications. Section 7-1-703 places restrictions on acquisition of institutions and holding companies. Section 7-1-704 states that an institution subject to the jurisdiction of the department may maintain an office in this state or engage in activities of a financial institution in this state only if it is authorized to do so by the department. Section 7-1-705 lists the criteria necessary to file an application with the department as well as what is required for approval and grounds for disapproval.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule applies to all applicants to the department for change of control, acquisition of, merger, or consolidation with any financial institution chartered by the state and should be continued.

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](mailto:pallred@utah.gov)

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/24/2012

**Financial Institutions, Administration  
R331-23  
Lending Limits for Banks, Industrial  
Loan Corporations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36874  
FILED: 09/28/2012

**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 7-1-301 confers rulemaking powers and duties to the commissioner with respect to institutions, persons, or businesses subject to the jurisdiction of the department. Section 7-3-19 authorizes limitations on loans and extensions of credit. Section 7-8-20 lists limitations on loans to one borrower, the exceptions, and the rules.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is intended to prevent one person from borrowing an unduly large amount of a given bank's or industrial loan corporation's funds, thereby exposing the bank's or industrial loan corporation's depositors, creditors, and stockholders to excessive risk and should be continued.

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](mailto:pallred@utah.gov)

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2012

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**Financial Institutions, Banks**  
**R333-5**  
**Discount Securities Brokerage Service**  
**by Banks**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36777  
FILED: 09/17/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(3)(a) grants the commissioner power to authorize a state-chartered depository institution all rights, powers, privileges, benefits, or immunities it would possess if it were chartered under the laws of the United States. Section 7-3-3.2 authorizes banks to engage in the business of purchasing, selling, underwriting, and dealing in securities subject to the limitations of this section.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule limits securities activities to "discount brokerage" services and gives state-chartered banks competitive equality with national banks which have their principal office in this state by granting the same rights and privileges to state chartered bank as are enjoyed by Utah's national banks and should be continued.

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](mailto:pallred@utah.gov)

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/17/2012

**Financial Institutions, Banks  
R333-8  
Authority for Banks to Issue  
Subordinated Capital Notes or  
Debentures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36778  
FILED: 09/17/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(8)(v) authorizes the commissioner to put "limitations on the amount and type of borrowings by each class of financial institution in relation to the amount of its capital and the character and condition of its assets and its deposits and other liabilities". Section 7-3-28 covers the issuance of capital notes or debentures, when they shall be subordinated, that they may not exceed certain limitations, that the amount for not maturing within one year will be added to the capital of the bank, and other regulations for protection.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes the criteria and procedures for issuance of subordinated capital notes or debentures and limitations on the total amount of such instruments which may be outstanding in order to protect the bank's depositors and shareholders and should be continued.

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](mailto:pallred@utah.gov)

AUTHORIZED BY: Edward Leary, Commissioner  
EFFECTIVE: 09/17/2012

**Financial Institutions, Banks  
R333-9**

**Indemnification of Directors, Officers,  
and Employees**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36779  
FILED: 09/17/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(4) authorizes the commissioner to safeguard the interest of shareholders, members, depositors, and other customers of institutions. Section 7-3-13 restricts changes in the articles of incorporation if the change would result in the impairment of the rights, remedies, or securities of depositors and other creditors.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines, clarifies, and limits the extent to which a state-chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers, and employees. The rule also deters acts that could threaten the safety and soundness of banks by specifically prohibiting the indemnification of directors, officers, and employees and should be continued.

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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/17/2012

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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/17/2012

Financial Institutions, Banks  
**R333-10**

Securities Activities of Subsidiaries and  
 Affiliates of State-Chartered Banks

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36780  
 FILED: 09/17/2012

**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 7-3-3.2 authorizes banks to engage in the business of purchasing, selling, underwriting, and dealing in securities subject to the limitations of this section. Section 7-3-21 outlines the conditions of stock ownership by banks.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes safeguards to ensure that subsidiaries or affiliates engaged in securities activities do not endanger the safeness and soundness of the state-chartered banks and should be continued.

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.

Financial Institutions, Banks  
**R333-12**

Investment by State-Chartered Bank in  
 Real Property Other Than Bank  
 Premises

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36848  
 FILED: 09/24/2012

**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 7-1-301 authorizes rulemaking authority to the commissioner. Section 7-3-18 permits a bank to purchase, hold, and convey real estate, other than bank premises, only for those purposes and in a manner prescribed by the commissioner by regulation.

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 supporting or opposing written comments have been received by the agency concerning this rule.

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 authorizes state-chartered banks with sufficient capital to invest in real property other than bank premises as prescribed by the commissioner by regulation and should be continued.

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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/24/2012

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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/21/2012

**Financial Institutions, Consumer Credit**  
**R335-1**  
**Rule Prohibiting Negative Amortizing**  
**Wrap Loans**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT**  
**OF CONTINUATION**  
 DAR FILE NO.: 36844  
 FILED: 09/21/2012

**NOTICE OF REVIEW AND STATEMENT OF**  
**CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 70C-8-102(1)(e) authorizes the department to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose for this rule is to prohibit wrap loans that will not fully service all obligations wrapped by the loan and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 FINANCIAL INSTITUTIONS  
 CONSUMER CREDIT  
 ROOM 201  
 324 S STATE ST  
 SALT LAKE CITY, UT 84111-2393  
 or at the Division of Administrative Rules.

**Financial Institutions, Consumer Credit**  
**R335-2**  
**Rule Prescribing Allowable Terms and**  
**Disclosure Requirements for Variable**  
**and Adjustable Interest Rates in**  
**Consumer Credit Contracts**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT**  
**OF CONTINUATION**  
 DAR FILE NO.: 36849  
 FILED: 09/24/2012

**NOTICE OF REVIEW AND STATEMENT OF**  
**CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 70C-8-102(1)(e) authorizes the department to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose for this rule is to distinguish variable or adjustable interest rates from other kinds of rate formulas or provisions, to specify what must be included in rate formulas represented to be variable or adjustable and to specify certain disclosure requirements under state and federal law applicable to variable or adjustable rate and other formulas; and therefore, it should be continued.

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

FINANCIAL INSTITUTIONS  
CONSUMER CREDIT  
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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/24/2012

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## Financial Institutions, Consumer Credit **R335-4**

### Notice Concerning Refund of Unearned Credit Insurance Premiums Upon Prepayment of a Consumer Debt

#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36845  
FILED: 09/21/2012

#### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 70C-8-102(1)(e) authorizes the department to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose for this rule is to require all consumer creditors, including assignees or other successors

in interest, to notify a borrower when a debtor may be entitled to a separate refund of unearned credit insurance premiums and should be continued.

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

FINANCIAL INSTITUTIONS  
CONSUMER CREDIT  
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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/21/2012

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## Financial Institutions, Credit Unions **R337-7**

### Discount Securities Brokerage Service by State-Chartered Credit Unions

#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36875  
FILED: 09/28/2012

#### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(3) authorizes the commissioner with powers, duties, and responsibilities of all institutions subject to the jurisdiction of the department and he may authorize the activities state-chartered depository institutions may engage in as if they were chartered under the laws of the United States.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule allows securities activities limited to "discount brokerage" services by state-chartered credit

unions, similar to the discount brokerage services allowed state-chartered banks and industrial loan corporations, and should be continued.

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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2012

to maintain accounts in the name of businesses or entities other than individual members to the same extent as credit unions chartered under the laws of the United States and should be continued.

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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2012

**Financial Institutions, Credit Unions**  
**R337-8**  
**Accounts for Parties Other Than**  
**Individual Members in State-Chartered**  
**Credit Unions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 36876  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(3) authorizes the commissioner with powers, duties, and responsibilities of all institutions subject to the jurisdiction of the Department and he may authorize the activities state-chartered depository institutions may engage in as if they were chartered under the laws of the United States.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule allows state-chartered credit unions

**Financial Institutions, Credit Unions**  
**R337-9**  
**Schedule for Retention or Destruction**  
**of Records of Credit Unions Under the**  
**Jurisdiction of the Department of**  
**Financial Institutions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 36877  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(7) authorizes the commissioner to classify all records kept by institutions subject to the jurisdiction of the department and to prescribe the period for which each class of records is retained.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: The rule establishes a schedule for the retention of records of credit unions and should be continued. The purpose of the rule is to require the maintenance of appropriate types of records which have a high degree of usefulness and to prescribe the period for which records of each class are retained.

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

FINANCIAL INSTITUTIONS  
CREDIT UNIONS  
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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2012

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## Financial Institutions, Industrial Loan Corporations

### **R339-4**

#### Authority for Industrial Loan Corporations to Issue Subordinated Capital Notes or Debentures

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36850  
FILED: 09/24/2012

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(8) authorizes the commissioner to establish reasonable classes of financial institutions and types of investments for the deposits and other funds, as well as eligible obligations, reserves, and other accounts to be included in the computation of capital. Subsection 7-1-301(13) authorizes the commissioner to regulate the issuance, advertising, offer for sale, and sale of a security.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written

comments have been received by the agency concerning this rule.

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 construes, applies, and elaborates on Rule R331-5 as it applies to industrial loan corporations in the issuance of subordinated capital notes or debentures and should be continued.

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

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/24/2012

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## Financial Institutions, Industrial Loan Corporations

### **R339-6**

#### Rule Clarifying Industrial Loan Corporation Investments

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36851  
FILED: 09/24/2012

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(8) authorizes the commissioner to establish reasonable classes of financial institutions and types of investments for the deposits and other funds. Section 7-8-13 allows industrial loan corporations to purchase, hold and convey real estate, other than premises used in the conduct of its business. Section 7-8-14 lists the types of investments in property industrial loan corporations may invest in including real property and any interest in real property, stock, bonds, debentures, etc.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate and should be continued.

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](mailto:pallred@utah.gov)

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/24/2012

**Financial Institutions, Industrial Loan Corporations  
 R339-11  
 Discount Securities Brokerage Service  
 by Industrial Loan Corporations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 36878  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 7-1-301(3) authorizes the commissioner with the power, duties, and responsibilities of all institutions subject to the jurisdiction of the Department, and he may authorize the activities state-chartered depository institutions may engage in as if they were chartered under the laws of the United States.

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 supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule allows securities activities limited to "discount brokerage" services by industrial loan corporations, similar to the discount brokerage services allowed state-chartered banks and credit unions, and should be continued.

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](mailto:pallred@utah.gov)

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2012

**Health, Health Care Financing  
 R410-14  
 Administrative Hearing Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 36870  
 FILED: 09/27/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to establish a fair hearing process for Medicaid recipients and recipients in the Children's Health Insurance Program (CHIP). In addition, Section 1902(a)(3) of the Social Security Act requires the Department to grant a fair hearing to any individual whose claim is denied or not acted upon with reasonable promptness.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** One managed care organization (MCO) provided comments which assert the Department exceeded its authority by allowing all Medicaid providers to bring nearly any dispute to the administrative hearing process. According to the MCO, this allowance violated state and federal law, was contrary to public policy, and interfered with the MCO's existing contracts with its providers. The MCO also felt that recent changes in the rule discouraged arbitration between contracted parties (providers and health plans) and increased administrative costs due to the greater number of disputed claims. In addition, the MCO asserted that the changes allowed non-contracted providers fair hearing rights not afforded to contracted providers, and thus discouraged contracted providers from contracting with Medicaid plans for the provision of Medicaid services. The lack of provider incentive, therefore, is contrary to policies designed to encourage efficient and effective health program management. The MCO further insisted that changes in the rule are ambiguous as to whether contract provisions control or whether administrative hearings control, and that the changes do not address the real issues of claim disputes, breaches, and provider performance.

**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 necessary because it establishes a fair hearing process for Medicaid recipients and CHIP recipients who disagree with any decision made by a state agency or MCO that is based on payment of a claim, service coverage, or client eligibility. It is also necessary because it establishes administrative hearing procedures for the Division of Medicaid and Health Financing, the Department of Workforce Services, the Department of Human Services, and the MCOs that carry out the fair hearing process. Therefore, this rule should be continued. The Department agrees that the rule must be consistent with public policy and state and federal law. Nevertheless, the Department does not agree that changes in the rule limit the fair hearing rights of contracted providers. Moreover, the Department supports alternative dispute resolution and does not intend to abrogate the rights of parties to arbitrate their disagreements. There is no evidence to support the MCO's assertion that the rule increases the cost of administering the Medicaid program through an increase in fair hearings. For example, when the Department made changes to the rule in April 2011 that did not allow non-contracted parties access to the fair hearing process, it did not see a significant reduction of administrative cases or a lessening of the administrative burden. The Department further disagrees that non-contracted parties who participate in the administrative hearing process will discourage medical professionals from becoming providers. The Department also maintains that having an impartial party to hear a dispute serves as a benefit rather than as a deterrent for a provider. The Department acknowledges the

need to update language in the rule and will remove any ambiguities.

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

HEALTH  
HEALTH CARE FINANCING  
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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 09/27/2012

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-70  
Medical Supplies, Durable Medical  
Equipment, and Prosthetic Devices**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36869  
FILED: 09/27/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to implement services to Medicaid recipients who need medical supplies, durable medical equipment (DME), and prosthetic devices. This rule is also authorized under Section 26-18-2.3, which requires the Department to provide these services in an efficient and economical manner that safeguards against unnecessary, unreasonable, or inappropriate use.

**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 received comments by the Division of Health Care Financing (DHCF) are: 1) The term "entitled to nursing facility services" is relevant in that home

health services are a mandatory category of services for all individuals for whom nursing facility care is an entitlement (42 USC 1396a(a)(10)(D)). The definition of "entitled to nursing facility services" is determined by federal Medicaid law. Medicaid mandates nursing facility services for persons 21 years of age or over who fall within the categorically needy eligibility group. States have the option to cover nursing facility services for Medicaid beneficiaries that fall within various medically needy eligibility categories. Utah has elected to make many selected categories of the medically needy "entitled to nursing facility care". Thus, under the Utah Medicaid Plan all categorically needy and most medically needy Medicaid recipients are entitled to nursing facility services. Entitlement to nursing facility services does not have the same meaning as eligible for nursing facility care. As a matter of federal law, entitlement may not be conditioned upon the factors described in the proposed definition, which address eligibility (level of care) criteria. In Subsection R414-70-2(2), DHCF defines "Entitled to nursing facility services" to mean an individual who: a) is in a nursing facility and whose nursing stay is covered by Medicaid; or b) is receiving services in a waiver program for individuals who require nursing facility services. In this definition, DHCF is mixing up "entitlement" with "eligibility". Under federal Medicaid law eligibility is a sub-level of entitlement. An individual is entitled to services if they fall within a category that is in the state's Medicaid plan. The state agency may condition eligibility for those services by factors such as medical necessity and certain limits on utilization. The criteria used by DHCF in proposed Subsection R414-70-2(2) are eligibility criteria, not entitlement criteria. Source: "Understanding Medicaid Home and Community Services; A Primer," United States (U.S.) Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, October 2000, Chapter 3, p 41-42; 2) in 42 USC 1396a(a)(10)(D), it states that home health services are mandatory services for any individual who is entitled to nursing facility services. As a consequence, home health services are mandatory for categorically needy persons over 21 and older, and persons belonging to optional categories of the medically needy for whom nursing facility services are reimbursable under Utah's Medicaid Plan. Medical supplies and DME are mandatory components of home health services (42 CFR 440.70(b)). In Rule R414-70, the DHCF indicates that medical supplies and DME are optional services for most Medicaid recipients, see Subsections R414-70-3(1) and R414-70-4(1). This erroneous assumption flows from its mistaken definition of "Entitled to nursing facility services". Medical supplies and DME are optional only for those few Medicaid recipients that are not entitled to nursing facility services because they fall within a medically needy eligibility category that is not entitled to nursing facility care; 3) DHCF's suggested discretion between providing mandatory versus optional services is inconsistent with the Medicaid Act. States are not required to include optional categories of services in their state Medicaid plans. However, if they choose to do so, the services in the optional category are governed by the same requirements as mandatory services; 4) the "suitable for use in the home" limitation is found in several definitional sections of the new

proposed rule, Subsection R414-70-2(1)(5)(7). Now, as in the past, the meaning of this phrase has been a source of misunderstanding and concern. To avoid similar problems in the future, the definition of DME should eliminate this phrase; 5) in Section R414-70-5, particular medical supplies or DME are a covered service if they are included on a list that appears in the Medicaid Supplies Manual and List. If the device does not appear on the list, an individual can request agency review of whether reimbursement for the device should be granted (Subsection R414-70-5(3)). This exception process must be available whether the device is considered optional or mandatory for the individual. In other words, subsection (3) should be included in both Sections R414-70-4 and R414-70-5. This exception process should be triggered automatically when medical supplies or DME are considered mandatory or optional for that individual. There must also be some explanation provided when an exception will be granted. The criteria should only be the medical necessity of the device; 6) the law firm requests that the written decision include language informing the applicant that the firm is available to provide legal representation for individuals seeking to appeal a denial; and 7) the agency should also adopt procedures that allow a representative of the firm to attend meetings of the Medical Utilization Review Committee.

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 necessary because it specifies criteria for Medicaid recipients who are eligible to receive medical supplies, DME, and prosthetic devices as either optional services, mandatory services, or services provided in long-term care facilities. Therefore, this rule should be continued. The Department response to the written comments is as follows: 1) there is no federal statutory law that provides for mandatory coverage of home health service to everyone that is categorically needy and to certain medically needy if a state plan covers the medically needy. Instead, 42 USC 1396a(a)(10)(A), excludes home health care services from the Medicaid list of mandatory services and leaves home health care services on the list of optional services. 42 USC 1396a(a)(10)(D), provides a limited exception of making home health services mandatory in the particular circumstance of when "any individual who, under the State plan, is entitled to nursing facility services". The "Understanding Medicaid Home and Community Services; A Primer" cited in the comments is an informational document written by members of private disability advocacy groups and published by the U.S. Department of Health and Human Services. The "Primer" cites no statutory or legal source for the view that Medicaid covered individuals who may eventually reach a physical condition to qualify for home health services are presently entitled to receive such services. Such an assertion is opposite and contrary to the Medicaid statutory scheme of home health services being specifically listed as an optional service with a limited exception for individuals who qualify and are thereby entitled to nursing facility services; 2) there is no federal Medicaid statute which states that home health services are mandatory

for categorically needy persons over 21 or medically needy persons who can try to obtain nursing facility services under the state plan. Contrary to this assertion, 42 USC 1396a(a)(10)(A), specifically places home health care on its list of optional coverage services. Rule R414-70 implements the federal exception found in 42 USC 1396a(a)(10)(D), which only makes home health care mandatory in limited situations of when recipients are entitled to nursing facility services. Accordingly, DME and medical supplies are only mandatory for recipients who presently qualify and are therefore entitled to live in a nursing facility, yet, reside at home; 3) the agency believes the discretion to limit the scope of optional services is supported by the statutory and regulatory scheme governing Medicaid. States are given broad discretion to manage the Medicaid program and it is the right and obligation of the agency to define the extent to which optional services will be provided; 4) "Suitable for use in the home" is an express limitation set forth in 42 CFR 440.70(b)(3). DHCF believes it would be inappropriate to eliminate the phrase; 5) Utah Medicaid has broad discretion in setting the scope of services that will be covered within an optional category without reference to medical necessity criteria. With mandatory services, Utah Medicaid's discretion is more limited in defining the scope of coverage, where medical necessity is part of exercising agency discretion. The Medicaid Supplies Manual and List reflect what Utah Medicaid has determined to be medically necessary services for home health services. Nevertheless, with mandatory coverage a process is provided for contesting denial of coverage if medical necessity can be shown. Sections R414-70-4 and R414-70-5 reflect these Medicaid principles that optional and mandatory services are treated differently; 6) DHCF is unaware of any Medicaid regulation authorizing such a referral to the law firm. In the absence of such a regulation, the request presents two major difficulties. First, it appears inappropriate for the agency to support referrals to one legal provider among many within the state who may wish to obtain such a referral. Second, while many recipients are disabled, all are not and it is unclear that firm would be able to assist those who are not disabled; and 7) such representation would be inappropriate and would violate the privacy standards described in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) which apply to Medicaid. The Utilization Review Committee considers medical issues and reviews medical information regarding individual Medicaid recipients. The representatives of the firm have no right under HIPAA to access such information and the presence of such a representative would constitute an unauthorized release of protected health information and would violate relevant HIPAA regulations.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 09/27/2012

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**Housing Corporation (Utah),  
Administration  
R460-1  
Authority and Purpose**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36882  
FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with a clear statement of the rulemaking authority granted to UHC by statute, and to provide a written statement of the purpose for the UHC's rules.

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

HOUSING CORPORATION (UTAH)  
ADMINISTRATION  
2479 LAKE PARK BLVD  
WEST VALLEY CITY, UT 84120  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

Housing Corporation (Utah),  
 Administration

**R460-2**

Definitions of Terms Used Throughout  
 R460

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36883  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with clear definitions of terms used in UHC's rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HOUSING CORPORATION (UTAH)  
 ADMINISTRATION  
 2479 LAKE PARK BLVD  
 WEST VALLEY CITY, UT 84120  
 or at the Division of Administrative Rules.

Housing Corporation (Utah),  
 Administration

**R460-3**

Programs of UHC

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36884  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with a clear statement of the programs available from UHC and the general purpose and scope of each of those programs which have been created under authority granted to UHC by statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HOUSING CORPORATION (UTAH)  
 ADMINISTRATION  
 2479 LAKE PARK BLVD  
 WEST VALLEY CITY, UT 84120  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

Housing Corporation (Utah),  
 Administration

**R460-4**

Additional Servicing Rules

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36885  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Although the only text in the rule will be "reserved", it is necessary to continue this rule to provide the public with the idea that UHC is, to some extent, involved in and concerned with loan servicing and may add verbiage to the rule at a future date.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HOUSING CORPORATION (UTAH)  
 ADMINISTRATION  
 2479 LAKE PARK BLVD  
 WEST VALLEY CITY, UT 84120  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

Housing Corporation (Utah),  
 Administration

**R460-5**

Termination of Eligibility to Participate  
 in Programs

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36886  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with a clear statement of what type of activity and/or behavior by a participant in UHC's programs may lead to the termination of that participant's eligibility to continue to participate in UHC's programs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HOUSING CORPORATION (UTAH)  
 ADMINISTRATION  
 2479 LAKE PARK BLVD  
 WEST VALLEY CITY, UT 84120  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

Housing Corporation (Utah),  
Administration  
**R460-6**  
Adjudicative Proceedings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36887  
FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with a clear statement of the process UHC will follow when UHC determines that an adjudicative proceeding is necessary.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HOUSING CORPORATION (UTAH)  
ADMINISTRATION  
2479 LAKE PARK BLVD  
WEST VALLEY CITY, UT 84120  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org  
AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

Housing Corporation (Utah),  
Administration  
**R460-7**  
Public Petitions for Declaratory Orders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36888  
FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with a clear statement of the procedures required for petitions for declaratory orders with regard to the applicability of rules, statutes, and orders governing or issued by UHC.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HOUSING CORPORATION (UTAH)  
ADMINISTRATION  
2479 LAKE PARK BLVD  
WEST VALLEY CITY, UT 84120  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

Housing Corporation (Utah),  
 Administration

**R460-8**

Americans with Disabilities Act (ADA)  
 Complaint Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36889  
 FILED: 09/28/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 35A, Chapter 8, Part 7, as amended (the Act) is the enabling legislation of Utah Housing Corporation (UHC). Section 35A-8-711 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 35A-8-712 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: UHC has received no comments, either written or verbal, supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with a clear procedure UHC will follow for the prompt and equitable resolution of any complaints filed under the Americans with Disabilities Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HOUSING CORPORATION (UTAH)  
 ADMINISTRATION  
 2479 LAKE PARK BLVD  
 WEST VALLEY CITY, UT 84120  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jonathan Hanks by phone at 801-902-8221, by FAX at 801-902-8321, or by Internet E-mail at jhanks@uthc.org

AUTHORIZED BY: Grant Whitaker, President and CEO

EFFECTIVE: 09/28/2012

Insurance, Title and Escrow  
 Commission

**R592-5**

Title Insurance Product or Service  
 Approval for a Dual Licensed Title  
 Licensee

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 36861  
 FILED: 09/27/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-404 gives the Title Commission to the authority to make rules according to the Administrative Rulemaking Act and to provide the Real Estate Commission that same information. Section 31A-2-405 allows the commission to make rules subject to Section 31A-2-404 to implement the filing requirements under Subsection (2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule sets requirements for a dual licensed title licensee to obtain approval from the insurance commissioner or expedited approval from the Title and Escrow Commission to sell a title insurance product. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 INSURANCE  
 TITLE AND ESCROW COMMISSION

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](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 09/27/2012

**Natural Resources; Oil, Gas and  
 Mining Board  
 R641-100  
 General Provisions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 36786  
 FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the rule renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 OIL, GAS AND MINING BOARD  
 ROOM 1210  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at [steveschneider@utah.gov](mailto:steveschneider@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

**Natural Resources; Oil, Gas and  
 Mining Board  
 R641-101  
 Parties**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 36787  
 FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 OIL, GAS AND MINING BOARD  
 ROOM 1210  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at [steveschneider@utah.gov](mailto:steveschneider@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

**Natural Resources; Oil, Gas and Mining Board  
R641-102  
Appearances and Representations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36788  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

**Natural Resources; Oil, Gas and Mining Board  
R641-103  
Intervention**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36789  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-104**  
Pleadings

Natural Resources; Oil, Gas and Mining Board  
**R641-105**  
Filing and Service

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36790  
FILED: 09/18/2012

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36791  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-106**  
Notice and Service

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36792  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-107**  
Prehearing Conference

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36793  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-108**  
Conduct of Hearings

Natural Resources; Oil, Gas and Mining Board  
**R641-109**  
Decisions and Orders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36794  
FILED: 09/18/2012

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36795  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-110**

Rehearing and Modification of Existing Orders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36796  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-111**

Declaratory Rulings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36797  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and  
Mining Board  
**R641-112**  
Rulemaking

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36798  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 63G-3-101 et seq., the Utah Administrative Rulemaking Act, which requires the Board to promulgate rules in accordance with such act. In addition, the Board has been granted rulemaking authority in Section 40-6-5 and Subsections 40-8-6(1) and 40-10-6(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that petitioners, the Board and parties interested in commenting on the Board's rules are clear that the rulemaking procedure by the Board of Oil, Gas and Mining will be in accordance with the Utah Administrative Rulemaking Act.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at [steveschneider@utah.gov](mailto:steveschneider@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and  
Mining Board  
**R641-113**  
Hearing Examiners

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36799  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at [steveschneider@utah.gov](mailto:steveschneider@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-114**

Exhaustion of Administrative Remedies

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36800  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-115**

Deadline for Judicial Review

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 36801  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board

R641-116

Judicial Review of Formal Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36802 FILED: 09/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

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

NATURAL RESOURCES OIL, GAS AND MINING BOARD ROOM 1210 1594 W NORTH TEMPLE SALT LAKE CITY, UT 84116-3154 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board

R641-117

Civil Enforcement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36803 FILED: 09/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

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NATURAL RESOURCES OIL, GAS AND MINING BOARD ROOM 1210 1594 W NORTH TEMPLE SALT LAKE CITY, UT 84116-3154 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

Natural Resources; Oil, Gas and Mining Board  
**R641-118**  
Waivers

Natural Resources; Oil, Gas and Mining Board  
**R641-119**  
Severability

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36804  
FILED: 09/18/2012

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 36805  
FILED: 09/18/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Western Energy Alliance expressed support for the renewal in July 2012.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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 should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/18/2012

EFFECTIVE: 09/18/2012

**Natural Resources, Parks and  
Recreation  
R651-227**

**Boating Safety Course Fees**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36891  
FILED: 09/28/2012

**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: In Subsection 73-18-15.2(7)(a) "The division may collect fees set by the Utah State Parks and Recreation board in accordance with Section 63J-1-504 from each person who takes the division's boating safety course to help defray the cost of the boating safety course", the legislature gives the State Parks Board authority to set boating safety course fees. This rule is the boards' rule for fees associated with our boating education courses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments concerning Rule R651-227 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The funds collected under this rule help the division provide a boating education program for the boaters of the State of Utah. A portion of this program provides mandatory (statutory) education for youth operating personal watercraft. The fees specifically cover the costs of materials and the mailing of the course certificates. Therefore, this rule should be continued.

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

NATURAL RESOURCES  
PARKS AND RECREATION  
ROOM 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at [tammywright@utah.gov](mailto:tammywright@utah.gov)

AUTHORIZED BY: Fred Hayes, Director

EFFECTIVE: 09/28/2012

**Natural Resources, Parks and  
Recreation  
R651-410**

**Off-Highway Vehicle Safety Equipment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36890  
FILED: 09/28/2012

**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 was established and is required by Subsection 41-22-10.7(2), which states; "In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules which set standards for the equipment and which designate sand dunes where safety flags are required under Subsection (1)."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the last five years, the Division of Utah State Parks and Recreation has not received any written comments in either favor or against this rule. This rule focuses upon off-highway vehicle safety equipment specifically safety flags that are required on designated sand dunes.

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 should be continued because it defines the requirement to place a safety flag on an OHV, which are required to be mounted on any OHV at Coral Pink Sand Dunes, Big Sand Mountain Recreation Management Area, and the Little Sahara Special Recreation Management Area. Without this rule, safety would be hindered and potential lives could be lost. This rule provides a safety requirement when operating OHVs upon certain sand dunes, in which eye sight is limited of other OHVs.

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

NATURAL RESOURCES  
PARKS AND RECREATION

ROOM 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Director

EFFECTIVE: 09/28/2012

Natural Resources; Forestry, Fire and  
State Lands  
**R652-121**

Wildland Fire Suppression Fund

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36854  
FILED: 09/25/2012

**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 implements Article XVIII of the Utah Constitution and provides for administration of the Wildland Fire Suppression Fund under the authority of Section 65A-8-207.

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 supporting or opposing written comments have been received since the last continuation.

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 gives the division direction for the consistent administration of the Wildland Fire Suppression Fund and provides the counties with the requirements necessary for the use of the fund dollars for fire suppression. This rule is essential for the continued statutory application of the Wildland Fire Suppression Fund and the health of the Wildland Fire Program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS

1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 09/25/2012

Natural Resources, Wildlife Resources  
**R657-13**  
Taking Fish and Crayfish

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36893  
FILED: 10/01/2012

**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 23-14-8 and 23-14-19, the Wildlife Board is authorized to provide standards and procedures for taking fish and crayfish.

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 R657-13 have been received since 10/10/2007, 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 R657-13 provides the procedures, standards, and requirements for taking fish and crayfish in the state of Utah. The provisions adopted in this rule are effective. Continuation of this rule is necessary for continued success for allowing anglers of Utah to take fish and to protect the resource.

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: 10/01/2012

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: 10/01/2012

**Natural Resources, Wildlife Resources  
R657-16**

**Aquaculture and Fish Stocking**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36894  
FILED: 10/01/2012

**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 23-15-9 and 23-15-10, the Wildlife Board is authorized to provide standards and procedures for institutional aquaculture, private fishponds, short-term fishing events, private fish stocking and displaying aquaculture products or aquatic wildlife in aquaria.

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 R657-16 have been received since 10/10/2007, 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 R657-16 provides the procedures, standards, and requirements for: institutional aquaculture, private fish ponds, short-term fishing events, private fish stocking, and displaying aquaculture products or aquatic wildlife in aquaria. The provisions adopted in this rule are effective. Continuation of this rule is necessary for continued success for allowing institutional and private fish ponds, and short-term fishing events.

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.

**Natural Resources, Wildlife Resources  
R657-52**

**Commercial Harvesting of Brine Shrimp  
and Brine Shrimp Eggs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36895  
FILED: 10/01/2012

**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 23-14-3, 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 R657-52 have been received since 10/04/2007, 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 R657-52 provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs. The provisions adopted in this rule are effective. Continuation of this rule is necessary for continued success in protecting, conserving, and managing the brine shrimp resource.

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: 10/01/2012

Regents (Board of), College of Eastern  
Utah  
**R767-1**  
Government Records Access and  
Management Act

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36902

FILED: 10/01/2012

**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 63A-12-103 allows state agencies to specify, by rule, those in the agencies to whom requests for access to records should be addressed. Section 63A-12-104 allows a governmental entity to determine, by rule, at what level within the entity the requirements of Title 63A, Chapter 12, shall be undertaken.

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 rule is enacted according to Sections 63G-2-204 and 63A-12-104. As a public institution of higher learning, the College is required to comply with the laws. Therefore, this rule should be continued.

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

REGENTS (BOARD OF)  
COLLEGE OF EASTERN UTAH  
ACADEMIC RECORDS/REGISTRAR  
451 E 400 N  
PRICE, UT 84501  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jan Young by phone at 435-613-5205, by FAX at 435-613-5814, or by Internet E-mail at jan.young@ceu.edu

AUTHORIZED BY: Jan Young, Director of Academic Records/Registrar

EFFECTIVE: 10/01/2012

Technology Services, Administration  
**R895-12**  
Telecommunications Services and  
Requirements

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 36896

FILED: 10/01/2012

**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: As provided in Section 63F-1-206, all state agencies must subscribe to the telecommunications services of the Department of Technology Services, unless excepted by law. The purpose of this rule is to specify the standards and procedures required of state agencies for telecommunications services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As provided in Section 63F-1-206, all state agencies must subscribe to the telecommunications services of the Department of Technology Services, unless excepted by law. The purpose of this rule is to specify the standards and procedures required of state agencies for telecommunications services. Therefore, this rule should be continued.

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

TECHNOLOGY SERVICES  
ADMINISTRATION  
ROOM 6000 STATE OFFICE BUILDING

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

SALT LAKE CITY, UT 84116-2982  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: Mark VanOrden, Executive Director and CIO

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 10/01/2012

EFFECTIVE: 10/01/2012

**Transportation, Operations,  
Aeronautics  
R914-1  
Rules and Regulations**

**Transportation, Operations,  
Aeronautics  
R914-2  
Safety Rules and Procedures for  
Aircraft Operations on Roads**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36899  
FILED: 10/01/2012

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36900  
FILED: 10/01/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

**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 72-10-103 requires the Utah Department of Transportation to make rules regulating the use, licensing and supervision of airports, governing the establishment, location and use of air navigational aids, and establishing minimum standards for operational safety.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 72-10-117 requires the Utah Department of Transportation to make rules establishing procedures for aircraft operations on county roads.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received from interested persons during and since the last five-year review of this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received from interested persons during and since the last five-year review of this rule.

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 should continue in effect to enable the department to meet its statutory obligation to regulate the use, licensing and supervision of airports, govern the establishment, location and use of air navigational aids, and establish minimum standards for operational safety.

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 should continue in effect to enable the department to meet its statutory obligation to regulate aircraft operations on county roads.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
OPERATIONS, AERONAUTICS  
135 N 2400 W

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
OPERATIONS, AERONAUTICS  
135 N 2400 W  
SALT LAKE CITY, UT 84116-2982  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

EFFECTIVE: 10/01/2012

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AUTHORIZED BY: John Njord, Executive Director

**End of the Five-Year Notices of Review and Statements of Continuation Section**



**NOTICES OF  
FIVE-YEAR REVIEW EXTENSIONS**

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (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. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

The five-year review extension is governed by Subsections 63G-3-305(4) and (5).

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**Health, Family Health and  
Preparedness, Emergency Medical  
Services  
R426-2  
Air Medical Service Rules**

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 36880  
FILED: 09/28/2012

EXTENSION REASON AND NEW DEADLINE: The Division is in the process of repealing and proposing new rules for all its rules. An extension is requested so they can go through the repeal process on this rule. New deadline is: 02/23/2013.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov  
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 09/28/2012

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**Health, Family Health and  
Preparedness, Emergency Medical  
Services  
R426-6  
Emergency Medical Services  
Competitive Grants Program Rules**

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 36881  
FILED: 09/28/2012

EXTENSION REASON AND NEW DEADLINE: The Division is in the process of repealing and proposing new rules for all its rules. An extension is requested so they can go through the repeal process on this rule. New deadline is: 02/28/2013.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov  
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 09/28/2012

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**Regents (Board of), University of Utah,  
Commuter Services  
R810-1  
University of Utah Parking Regulations**

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 36897  
FILED: 10/01/2012

EXTENSION REASON AND NEW DEADLINE: There has been a change in personnel at Commuter Services and they need time to train the new person. New deadline is 02/02/2013.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

AUTHORIZED BY: Alma Allred, Director

EFFECTIVE: 10/01/2012

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Regents (Board of), University of Utah,  
Commuter Services  
**R810-8**  
Vendor Regulations

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 36898  
FILED: 10/01/2012

EXTENSION REASON AND NEW DEADLINE: There has been a change in personnel at Commuter Services and they need time to train the new person. New deadline is 02/02/2013.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at [solomon.brumbaugh@utah.edu](mailto:solomon.brumbaugh@utah.edu)

AUTHORIZED BY: Alma Allred, Director

EFFECTIVE: 10/01/2012

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**End of the Notices of Five-Year Review Extensions Section**

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Commerce

Occupational and Professional Licensing

No. 36551 (AMD): R156-1. General Rule of the Division of Occupational and Professional Licensing

Published: 08/15/2012

Effective: 09/24/2012

No. 36552 (AMD): R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule

Published: 08/15/2012

Effective: 09/24/2012

### Real Estate

No. 36449 (AMD): R162-2e. Appraisal Management

Company Administrative Rules

Published: 08/01/2012

Effective: 09/26/2012

### Education

Administration

No. 36591 (AMD): R277-101. Utah State Board of Education Procedures

Published: 08/15/2012

Effective: 09/21/2012

No. 36592 (AMD): R277-103. USOE Government Records and Management Act

Published: 08/15/2012

Effective: 09/21/2012

No. 36594 (AMD): R277-110. Legislative Supplemental Salary Adjustment

Published: 08/15/2012

Effective: 09/21/2012

No. 36595 (AMD): R277-115-1. Definitions

Published: 08/15/2012

Effective: 09/21/2012

No. 36598 (AMD): R277-116. Utah State Board of Education Internal Audit Procedure

Published: 08/15/2012

Effective: 09/21/2012

No. 36599 (AMD): R277-400. School Emergency Response Plans

Published: 08/15/2012

Effective: 09/21/2012

No. 36600 (AMD): R277-410. Accreditation of Schools

Published: 08/15/2012

Effective: 09/21/2012

No. 36601 (REP): R277-411. Elementary School Accreditation

Published: 08/15/2012

Effective: 09/21/2012

No. 36602 (REP): R277-412. Junior High and Middle School Accreditation

Published: 08/15/2012

Effective: 09/21/2012

No. 36603 (REP): R277-413. Accreditation of Secondary Schools

Published: 08/15/2012

Effective: 09/21/2012

### Environmental Quality

Air Quality

No. 36176 (CPR): R307-801. Utah Asbestos Rule

Published: 08/15/2012

Effective: 10/01/2012

No. 36176 (R&R): R307-801. Asbestos

Published: 06/01/2012

Effective: 10/01/2012

Water Quality

No. 36502 (AMD): R317-1-7. TMDLs

Published: 08/01/2012

Effective: 09/26/2012

Governor

Energy Development (Office of)

No. 36548 (NEW): R362-1. Qualification for the Alternative

Energy Development Tax Credit

Published: 08/15/2012

Effective: 09/24/2012

Health

Administration

No. 36432 (NEW): R380-41. Governance Committee

Electronic Meetings

Published: 07/15/2012

Effective: 09/20/2012

Health Care Financing, Coverage and Reimbursement Policy

No. 36444 (AMD): R414-303. Coverage Groups

Published: 07/15/2012

Effective: 10/01/2012

No. 36443 (AMD): R414-307. Eligibility for Home and  
Community-Based Services Waivers

Published: 07/15/2012

Effective: 10/01/2012

No. 36566 (AMD): R414-308-3. Application and Signature

Published: 08/15/2012

Effective: 10/01/2012

No. 36565 (AMD): R414-310. Medicaid Primary Care  
Network Demonstration Waiver

Published: 08/15/2012

Effective: 10/01/2012

No. 36564 (AMD): R414-320. Medicaid Health Insurance  
Flexibility and Accountability Demonstration Waiver

Published: 08/15/2012

Effective: 10/01/2012

No. 36563 (AMD): R414-320-10. Income Provisions

Published: 08/15/2012

Effective: 10/01/2012

No. 36427 (NEW): R414-509. Medicaid Autism Waiver Open  
Enrollment Process

Published: 07/15/2012

Effective: 10/01/2012

Family Health and Preparedness, Licensing

No. 36445 (AMD): R432-270. Assisted Living Facilities

Published: 08/01/2012

Effective: 09/25/2012

Public Safety

Driver License

No. 36503 (AMD): R708-41-4. Obtaining a Utah Learner

Permit, Provisional License Certificate, Regular License

Certificate, Limited-Term License Certificate, Driving Privilege

Card, CDL Certificate, Limited-Term CDL Certificate,

Identification Card, or Limited-Term Identification Card

Published: 08/15/2012

Effective: 09/21/2012

Public Service Commission

Administration

No. 36214 (NEW): R746-313. Electric Service Reliability

Published: 06/01/2012

Effective: 09/24/2012

No. 36214 (CPR): R746-313. Electric Service Reliability

Published: 08/15/2012

Effective: 09/24/2012

Regents (Board of)

Administration

No. 36447 (REP): R765-626. Lender-of-Last-Resort

Program

Published: 08/01/2012

Effective: 10/01/2012

Tax Commission

Administration

No. 36546 (AMD): R861-1A-12. Policies and Procedures

Regarding Public Disclosure Pursuant to Utah Code Ann.

Section 59-1-210

Published: 08/15/2012

Effective: 09/27/2012

Motor Vehicle

No. 36547 (AMD): R873-22M-42. Issuance of Nonrepairable

Certificate in Certain Circumstances Pursuant to Utah Code

Ann. Section 41-1a-1005.5

Published: 08/15/2012

Effective: 10/01/2012

Transportation

Preconstruction, Right-of-Way Acquisition

No. 36606 (AMD): R933-3-4. When Access is Controlled

Published: 08/15/2012

Effective: 09/24/2012

Workforce Services

Employment Development

No. 36498 (AMD): R986-700-716. CC in Unusual  
Circumstances

Published: 08/01/2012

Effective: 09/18/2012

No. 36621 (AMD): R986-900-902. Options and Waivers

Published: 08/15/2012

Effective: 10/01/2012

Unemployment Insurance

No. 36613 (AMD): R994-201-101. General Definitions and  
Acronyms

Published: 08/15/2012

Effective: 09/27/2012

No. 36619 (AMD): R994-403. Claim for Benefits

Published: 08/15/2012

Effective: 10/01/2012

**End of the Notices of Rule Effective Dates Section**



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2012 through October 01, 2012. 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).

**DAR NOTE:** Due to space constraints, only the Agency Index is included in this Bulletin.

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 (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administration</u>					
R13-2-4	Requests for Access	36285	AMD	08/07/2012	2012-12/8
<u>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
<u>Debt Collection</u>					
R21-1	Transfer of Collection Responsibility of State Agencies	36420	5YR	06/28/2012	2012-14/59
R21-1	Transfer of Collection Responsibility of State Agencies	36495	AMD	09/07/2012	2012-15/6
R21-2	Office of State Debt Collection Administrative Procedures	36421	5YR	06/28/2012	2012-14/60
R21-3	Debt Collection Through Administrative Offset	36422	5YR	06/28/2012	2012-14/60
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	36145	5YR	05/03/2012	2012-11/177
R23-1-40	Procurement of Construction	36020	AMD	08/07/2012	2012-8/4
R23-1-40	Acceptable Bid Security; Performance and Payment Bonds	36020	CPR	08/07/2012	2012-13/88
R23-1-40	Acceptable Bid Security; Performance and Payment Bonds	36632	NSC	08/23/2012	Not Printed
R23-12	Building Code Appeals Process	36806	5YR	09/19/2012	Not Printed
R23-19	Facility Use Rules	36146	5YR	05/03/2012	2012-11/177
R23-20	Free Speech Activities	36148	5YR	05/03/2012	2012-11/178
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	36112	AMD	07/01/2012	2012-10/4
R25-7-6	Reimbursements for Meals	36636	NSC	08/30/2012	Not Printed
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
R25-20	Indigent Defense Funds Board, Procedures for Electronic Meetings	35975	NEW	05/22/2012	2012-8/5
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
R27-6	Fuel Dispensing Program	35620	5YR	01/05/2012	2012-3/106
R27-7	Safety and Loss Prevention of State Vehicles	36024	AMD	06/28/2012	2012-9/4

R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
R27-9	Dispensing Compressed Natural Gas to the Public	35727	NEW	03/26/2012	2012-4/6

Purchasing and General Services

R33-1	Utah State Procurement Rules Definitions	35664	AMD	03/30/2012	2012-3/4
R33-1	Utah State Procurement Rules Definitions	36423	5YR	07/02/2012	2012-14/61
R33-2	Procurement Organization	36424	5YR	07/02/2012	2012-14/61
R33-3	Source Selection and Contract Formation	35613	AMD	03/30/2012	2012-2/6
R33-3	Source Selection and Contract Formation	36425	5YR	07/02/2012	2012-14/62
R33-3-7	Types of Contracts	35667	AMD	03/30/2012	2012-3/6
R33-4	Specifications	35665	AMD	03/30/2012	2012-3/10
R33-4	Specifications	36426	5YR	07/02/2012	2012-14/62
R33-5	Construction and Architect-Engineer Selection	36428	5YR	07/02/2012	2012-14/63
R33-6-101	Revisions to Contract Clauses	35666	AMD	03/30/2012	2012-3/12
R33-8	Property Management	36430	5YR	07/02/2012	2012-14/63

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R37-3	Risk Management Adjudicative Proceedings	36288	5YR	05/30/2012	2012-12/82
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	36289	5YR	05/30/2012	2012-12/83
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R58-3	Brucellosis Vaccination Requirements	36143	EMR	05/08/2012	2012-11/167
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
R58-10	Meat and Poultry Inspection	36249	REP	07/26/2012	2012-12/9
R58-11	Slaughter of Livestock	35866	AMD	05/15/2012	2012-5/5
R58-11	Slaughter of Livestock and Poultry	36144	NSC	05/30/2012	Not Printed
R58-16	Swine Garbage Feeding	36248	REP	07/26/2012	2012-12/10
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R58-19	Compliance Procedures	35696	5YR	01/18/2012	2012-4/60
R58-21	Trichomoniasis	36164	AMD	07/10/2012	2012-11/4
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R58-23	Equine Viral Arteritis (EVA)	35693	5YR	01/18/2012	2012-4/61

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R65-5	Utah Red Tart and Sour Cherry Marketing Order	36488	5YR	07/12/2012	2012-15/73
R65-11	Utah Sheep Marketing Order	36490	5YR	07/12/2012	2012-15/74

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R68-21	Standard of Identity for Honey	35566	REP	03/07/2012	2012-2/16

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R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	35661	5YR	01/12/2012	2012-3/109
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R70-360	Procedure for Obtaining a License to Test Milk for Payment	35657	5YR	01/12/2012	2012-3/110
R70-520	Standard of Identity and Labeling Requirements for Honey	36147	NEW	07/10/2012	2012-11/6
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R70-550	Utah Inland Shellfish Safety Program	35659	5YR	01/12/2012	2012-3/110
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R81-1-6	Violation Schedule	35588	AMD	03/01/2012	2012-2/20
R81-3-11	Application	35942	AMD	07/17/2012	2012-7/4
R81-4A-2	Application	35943	AMD	05/22/2012	2012-7/5
R81-4B-2	Application	35944	AMD	05/22/2012	2012-7/6
R81-4C-2	Application	35945	AMD	05/22/2012	2012-7/8
R81-4D-2	Application	35946	AMD	05/22/2012	2012-7/9
R81-4E-2	Application	35947	AMD	05/22/2012	2012-7/11
R81-4F-2	Application	35948	AMD	05/22/2012	2012-7/12
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R81-4F-13	Agreement for Alcoholic Beverage Service	36115	AMD	07/01/2012	2012-10/10
R81-5-2	Application	35949	AMD	05/22/2012	2012-7/13
R81-6-1	Application	35950	AMD	05/22/2012	2012-7/15
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R131-10	Commercial Solicitations	35687	5YR	01/17/2012	2012-3/111
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R151-4-306	Motion to Recuse or Disqualify a Board or Commission Member	36416	AMD	08/21/2012	2012-14/4
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R152-22	Charitable Solicitations Act	35970	5YR	03/22/2012	2012-8/72
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R156-1	General Rule of the Division of Occupational and Professional Licensing	36551	AMD	09/24/2012	2012-16/4
R156-3a	Architect Licensing Act Rule	36282	AMD	07/30/2012	2012-12/12
R156-9	Funeral Service Licensing Act Rule	36117	AMD	06/21/2012	2012-10/17
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule	35853	5YR	02/06/2012	2012-5/101
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	36552	AMD	09/24/2012	2012-16/7
R156-16a	Optometry Practice Act Rule	35893	5YR	02/21/2012	2012-6/35
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-20a	Environmental Health Scientist Act Rule	36484	AMD	09/11/2012	2012-15/8
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	36090	AMD	06/21/2012	2012-10/19
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	36405	5YR	06/25/2012	2012-14/64
R156-37	Utah Controlled Substances Act Rule	35892	5YR	02/21/2012	2012-6/36
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R156-55d	Burglar Alarm Licensing Rule	36191	NSC	05/30/2012	Not Printed
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R156-60d	Substance Abuse Counselor Act Rule	36228	AMD	07/30/2012	2012-12/17
R156-60d	Substance Use Disorder Counselor Act Rule	36550	NSC	08/08/2012	Not Printed
R156-63b-102	Definitions	36192	NSC	05/30/2012	Not Printed
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	2012-4/64
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R156-67-503	Administrative Penalties	35389	CPR	03/09/2012	2012-3/86
R156-68-503	Administrative Penalties	35388	AMD	03/09/2012	2011-22/19
R156-68-503	Administrative Penalties	35388	CPR	03/09/2012	2012-3/90
R156-69-302d	Licensing of Dentist-Educators	36181	AMD	07/09/2012	2012-11/14
R156-75	Genetic Counselors Licensing Act Rule	36183	AMD	07/09/2012	2012-11/15
R156-75-102	Definitions	36450	NSC	07/25/2012	Not Printed
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R156-78B	Prelitigation Panel Review Rule	35820	5YR	02/02/2012	2012-5/102
R156-83-502	Unprofessional Conduct	35585	AMD	02/21/2012	2012-2/28

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R162-2e	Appraisal Management Company Administrative Rules	36449	AMD	09/26/2012	2012-15/10
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R162-2f	Real Estate Licensing and Practices Rules	36390	AMD	08/21/2012	2012-14/5
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R164-101	Securities Fraud Reporting Program Act	35558	NEW	02/21/2012	2012-2/29

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R182-2	Preservation Pro Fee	36353	NEW	08/31/2012	2012-13/14
R182-2 (Changed to R450-2)	Preservation Pro Fee	36751	NSC	10/01/2012	Not Printed

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R195-1	Energy Assistance: General Provisions	36313	REP	09/11/2012	2012-13/15
R195-2	Energy Assistance Programs Standards	36293	EXT	05/31/2012	2012-12/95
R195-2	Energy Assistance Programs Standards	36314	REP	09/11/2012	2012-13/17

R195-3	Energy Assistance Income Standards, Income Eligibility, and Payment Determination	36294	EXT	05/31/2012	2012-12/95
R195-3	Energy Assistance Income Standards, Income Eligibility, and Payment Determination	36315	REP	09/11/2012	2012-13/20
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R195-6	Energy Assistance: Eligibility Determination	36318	REP	09/11/2012	2012-13/24
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R195-7	Energy Assistance: Records and Benefit Management	36298	EXT	05/31/2012	2012-12/96
R195-7	Energy Assistance: Records and Benefit Management	36319	REP	09/11/2012	2012-13/25
R195-8	Energy Assistance: Special State Programs	35409	AMD	03/26/2012	2011-23/20
R195-8	Energy Assistance: Special State Programs	36302	EXT	05/31/2012	2012-12/96
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R202-101	Qualified Emergency Food Agencies Fund (QEFAF)	36326	REP	09/11/2012	2012-13/44

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**CORRECTIONS**

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R251-106	Media Relations	35760	EXD	01/18/2012	2012-4/123
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R251-106	Media Relations	35805	NEW	04/09/2012	2012-5/11
R251-107	Executions	35761	EXD	01/18/2012	2012-4/123
R251-107	Executions	35768	EMR	02/01/2012	2012-4/47
R251-107	Executions	35806	NEW	04/09/2012	2012-5/13
R251-108	Adjudicative Proceedings	35762	EXD	01/18/2012	2012-4/123
R251-108	Adjudicative Proceedings	35769	EMR	02/01/2012	2012-4/49
R251-108	Adjudicative Proceedings	35807	NEW	04/09/2012	2012-5/15
R251-115	Contract County Jail Programming Payment	36292	NEW	08/01/2012	2012-12/21
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R251-305	Visiting at Community Correctional Centers	36039	5YR	04/06/2012	2012-9/77
R251-306	Sponsors in Community Correctional Centers	35755	EXT	01/31/2012	2012-4/121
R251-306	Sponsors in Community Correctional Centers	36040	5YR	04/06/2012	2012-9/77
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R251-703	Vehicle Direction Station	35770	EMR	02/01/2012	2012-4/51
R251-703	Vehicle Direction Station	35808	NEW	04/09/2012	2012-5/17
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R251-705	Inmate Mail Procedures	35772	EMR	02/01/2012	2012-4/53
R251-705	Inmate Mail Procedures	35810	NEW	04/09/2012	2012-5/19
R251-706	Inmate Visiting	35766	EXD	01/18/2012	2012-4/124
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R277-101	Utah State Board of Education Procedures	36591	AMD	09/21/2012	2012-16/10
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R277-103	USOE Government Records and Management Act	36582	5YR	08/01/2012	2012-16/188
R277-103	USOE Government Records and Management Act	36592	AMD	09/21/2012	2012-16/12
R277-104	USOE ADA Complaint Procedure	36067	R&R	06/07/2012	2012-9/31
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R277-107-6	Public Education Employees	35932	AMD	05/08/2012	2012-7/27
R277-110	Legislative Supplemental Salary Adjustment	36583	5YR	08/01/2012	2012-16/188
R277-110	Legislative Supplemental Salary Adjustment	36594	AMD	09/21/2012	2012-16/14
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R277-400	School Emergency Response Plans	36599	AMD	09/21/2012	2012-16/18
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R277-408	Grants for Online Testing	36364	NEW	08/08/2012	2012-13/49
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R277-410	Accreditation of Schools	36600	AMD	09/21/2012	2012-16/21
R277-411	Elementary School Accreditation	36589	5YR	08/01/2012	2012-16/191
R277-411	Elementary School Accreditation	36601	REP	09/21/2012	2012-16/23
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R277-412	Junior High and Middle School Accreditation	36602	REP	09/21/2012	2012-16/24
R277-413	Accreditation of Secondary Schools	36603	REP	09/21/2012	2012-16/25
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R994-403-112c	Available	35448	AMD	01/17/2012	2011-23/98
R994-404	Payments Following Workers' Compensation	36256	5YR	05/22/2012	2012-12/92
R994-405	Ineligibility for Benefits	36224	AMD	07/09/2012	2012-11/164
R994-405-104	Quit to Accompany, Follow or Join a Spouse	36134	AMD	07/01/2012	2012-10/84
R994-406	Fraud, Fault and Nonfault Overpayments	36257	5YR	05/22/2012	2012-12/92
R994-508	Appeal Procedures	35455	AMD	02/01/2012	2011-23/101