The *Utah State Bulletin (Bulletin)* is the official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.state.ut.us/

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.state.ut.us/publicat/digest.htm for additional information.

The *Bulletin* is printed and distributed semi-monthly by Legislative Printing. The annual subscription rate (24 issues) is $174. Inquiries concerning subscription, billing, or changes of address should be addressed to:

**LEGISLATIVE PRINTING**  
PO BOX 140107  
SALT LAKE CITY, UT 84114-0107  
(801) 538-1103  
FAX (801) 538-1728  
ISSN 0882-4738
Division of Administrative Rules, Salt Lake City 84114

All materials in this publication are in the public domain and may be reproduced, reprinted, and/or redistributed as desired. Citation to the source is requested.

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Utah state bulletin. 
Semimonthly. 

KFU440.A73S7
348.792'025--DDC 85-643197
# TABLE OF CONTENTS

1. SPECIAL NOTICES

Commerce, Administration: Public Hearing on Proposed Fees for Services Provided and Costs Incurred by the Department of Commerce During Fiscal Year 2003 .................................................................1

Community and Economic Development, Community Development, Library: Public Notice of Available Utah State Publications.................................................................1

Governor, Administration: Executive Order: Establishing the Homeland Security Task Force.................................1

2. NOTICES OF PROPOSED RULES

**Agriculture and Food**

Animal Industry

No. 24194 (Amendment): R58-7-3. Livestock Markets .................................................................4


**Regulatory Services**

No. 24200 (Amendment): R70-910. Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices .................................................................7

No. 24198 (Amendment): R70-940. Standards and Testing of Motor Fuel .........................................9

**Commerce**

Occupational and Professional Licensing

No. 24247 (Amendment): R156-24a-601. Animal Physical Therapy ..................................................10

No. 24196 (Amendment): R156-60c-502. Unprofessional Conduct ...................................................11

No. 24202 (Repeal): R156-66a. Amateur Boxing Fund Grant Rules ..................................................12

**Education**

Administration

No. 24262 (Amendment): R277-502. Teacher Certification Procedures ..............................................13


No. 24254 (Repeal): R277-902. Applied Technology Center Tuitions ................................................19

No. 24255 (Repeal): R277-903. Career Ladders for Applied Technology Centers ..............................21

No. 24257 (Repeal): R277-904. Applied Technology Center and Service Region Standards and Operating Procedures ....................................................................................................23

No. 24258 (Repeal): R277-905. Standards for Granting Academic Credit by Utah System of Higher Education Institutions for Course Work Completed at Applied Technology Centers ........................................29

No. 24259 (Repeal): R277-907. ATC/ATCSR Membership Hour Accounting .....................................31

No. 24260 (Repeal): R277-912. Standards and Procedures for Post-Secondary Applied Technology Education Accreditation ..................................................................................................34

No. 24261 (Repeal): R277-913. Utah’s State Custom Fit Training Program ............................................35
TABLE OF CONTENTS

Health

Health Systems Improvement, Child Care Licensing
No. 24264 (Amendment): R430-50. Residential Certificate Child Care Standards ........................................... 37
No. 24265 (Amendment): R430-60. Hourly Child Care Center ................................................................. 40
No. 24266 (Amendment): R430-90. Licensed Family Child Care .............................................................. 45

Health Systems Improvement, Licensing
No. 24268 (Amendment): R432-35. Background Screening ................................................................. 51

Human Resource Management

Administration
No. 24236 (Amendment): R477-9. Employee Conduct ........................................................................... 54

Human Services

Recovery Services
No. 24190 (Amendment): R527-5. Release of Information ................................................................. 56

Insurance

Administration
No. 24237 (Repeal and Reenact): R590-148. Long-Term Care Insurance Rule ........................................... 60

Natural Resources

Forestry, Fire and State Lands
No. 24251 (New Rule): R652-140. Utah Forest Practices Act ................................................................. 83

Water Resources
No. 24238 (Amendment): R653-2. Financial Assistance from the Board of Water Resources .................. 84

Public Safety

Fire Marshal
No. 24249 (Amendment): R710-2. Rules Pursuant to the Utah Fireworks Act ........................................... 87
No. 24242 (Amendment): R710-3. Assisted Living Facilities ...................................................................... 91
No. 24243 (Amendment): R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board ............. 94
No. 24245 (Amendment): R710-8. Day Care Rules .................................................................................. 104

Workforce Services

Employment Development
No. 24240 (Amendment): R986-100. Employment Support Programs ......................................................... 113
No. 24241 (Amendment): R986-200. Family Employment Program ............................................................. 114
No. 24239 (Amendment): R986-400. General Assistance and Working Toward Employment .............................. 116
No. 24248 (Amendment): R986-700. Child Care Assistance ..................................................................... 117
No. 24250 (Amendment): R986-900. Food Stamps .................................................................................. 121
Workforce Information and Payment Services
No. 24253 (Amendment): R994-405-201. Discharge - General Definition ................................................................. 123

3. NOTICES OF CHANGES IN PROPOSED RULES

Insurance
Administration
No. 23814: R590-203. Health Care Benefits-Grievance Review Process Rule ................................................................. 126
No. 23813: R590-211. Underinsured Motorist Insurer Notification Ruling ................................................................. 128
No. 24050: R590-212. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits ... 129

4. FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Commerce
Administration

Occupational and Professional Licensing
No. 24192: R156-40. Recreational Therapy Practice Act Rules .................................................................................. 133

Environmental Quality
Solid and Hazardous Waste
No. 24195: R315-101. Cleanup Action and Risk-Based Closure Standards ................................................................ 134

Water Quality
No. 24204: R317-7. Underground Injection Control (UIC) Program ......................................................................... 135

Money Management Council
Administration
No. 24201: R628-17. Limitations on Commercial Paper and Corporate Notes .......................................................... 136

Natural Resources
Parks and Recreation
No. 24208: R651-201. Definitions ................................................................................................................................. 137
No. 24206: R651-203. Waterway Marking System ....................................................................................................... 137
No. 24211: R651-204. Regulating Waterway Markers ................................................................................................. 138
No. 24210: R651-205. Zoned Waters ............................................................................................................................. 138
No. 24209: R651-207. Registration Fee .......................................................................................................................... 139
No. 24212: R651-208. Backing Plates ............................................................................................................................ 139
No. 24205: R651-209. Registration Expiration ............................................................................................................. 140
No. 24232: R651-210. Change of Address .................................................................................................................... 140
TABLE OF CONTENTS

No. 24213: R651-211. Assigned Numbers ................................................................. 141

No. 24214: R651-213. Dealer Numbers and Registrations........................................ 141

No. 24227: R651-216. Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation .................................................. 142

No. 24225: R651-217. Fire Extinguishers .................................................................... 142

No. 24216: R651-218. Carburetor Backfire Flame Control ........................................ 142

No. 24215: R651-219. Additional Safety Equipment .................................................. 143

No. 24228: R651-220. Registration and Numbering Exemptions ............................... 143

No. 24217: R651-221. Boat Livery Agreements ......................................................... 144

No. 24230: R651-225. Navigation and Steering Rules ............................................... 144

No. 24218: R651-226. Regattas and Races ............................................................... 145

No. 24219: R651-401. Off-Highway Vehicle and Registration Stickers ..................... 145

No. 24231: R651-402. Registration Expiration ......................................................... 146

No. 24220: R651-403. Dealer Registration ............................................................... 146

No. 24222: R651-404. Temporary Registration .......................................................... 147

No. 24221: R651-405. Off-Highway Implement of Husbandry Sticker Fee ................ 147

No. 24229: R651-406. Off-Highway Vehicle Registration Fees ................................ 148

No. 24224: R651-801. Swimming Prohibited .......................................................... 148

No. 24226: R651-802. Scuba Diving ......................................................................... 148

School and Institutional Trust Lands
Administration
No. 24193: R850-8. Adjudicative Proceedings ......................................................... 149

5. NOTICES OF RULE EFFECTIVE DATES ...................................................................... 151

6. RULES INDEX ............................................................................................................. 153
SPECIAL NOTICES

COMMERCe ADMINISTRATION

PUBLIC HEARING ON PROPOSED FEES FOR SERVICES PROVIDED AND COSTS INCURRED BY THE DEPARTMENT OF COMMERCE DURING FISCAL YEAR 2003

The Department of Commerce will hold a hearing on Friday, December 7, 2001, at 9:00 a.m. at the Heber M. Wells Building, 160 East 300 South, Room 205, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on proposed fees which could to be assessed for services provided and costs which would be incurred by the Department during Fiscal Year 2003. Subsection 63-38-3.2(2)(b) of the Budgetary Procedures Act provides that an agency shall conduct a public hearing on any proposed regulatory fee.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Many existing fees are unchanged in the proposed fee schedule which has been prepared for consideration by the Legislature during its 2002 General Session. Copies of those schedules will be distributed at the December 7, 2001, hearing.

For further information, please contact Joyce McStotts at (801) 530-6347.

COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, LIBRARY

PUBLIC NOTICE OF AVAILABLE UTAH STATE PUBLICATIONS

The Utah State Library Division has made available Utah State Publications List No. 01-23, dated November 9, 2001 (http://library.utah.gov/01-23.html); and List No. 01-24, dated November 26, 2001 (http://library.utah.gov/01-24.html). For copies of the complete lists, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773; or view them on the World Wide Web at the addresses above.

GOVERNOR ADMINISTRATION

EXECUTIVE ORDER: ESTABLISHING THE HOMELAND SECURITY TASK FORCE

WHEREAS, the United States of America has recently experienced unprecedented loss of life and property related to terrorist acts;

WHEREAS, the President of the United States has established an Office of Homeland Security to strengthen America’s protection against terrorism; and

WHEREAS, the state of Utah, too, may be vulnerable to acts of terrorism;

NOW, THEREFORE, I, Michael O. Leavitt, Governor of Utah, do hereby establish the UTAH HOMELAND SECURITY TASK FORCE within the Utah Department of Public Safety, Division of Comprehensive Emergency Management, and direct the task force to safeguard the liberty, health and well-being of all people in Utah, public and private property, and the environment by engaging in proactive efforts to detect and protect, mitigate and prevent, prepare for, respond to, and recover from terrorist acts.
(STATE SEAL)

IN TESTIMONY WHEREOF, I have here unto set my hand and caused the Great Seal of the State of Utah to be affixed at Salt Lake City, Utah, this 9th day of November, 2001.

MICHAEL O. LEAVITT
Governor

Attest:
OLENE WALKER
Lieutenant Governor

End of the Special Notices Section
NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between November 2, 2001, 12:00 a.m., and November 15, 2001, 11:59 p.m., are included in this, the December 1, 2001, issue of the Utah State Bulletin.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [example]). Rules being repealed are completely struck out. A row of dots in the text (· · · · ) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the Utah State Bulletin until at least December 31, 2001. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through March 31, 2002, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the Utah State Bulletin. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by Utah Code Section 63-46a-4 (2001); and Utah Administrative Code Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.
Agriculture and Food, Animal Industry  
R58-7-3  
Livestock Markets  

NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 24194  
FILED: 11/07/2001, 15:04  

RULE ANALYSIS  
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt the most recent edition of 9 CFR 71.18, 71.19 and 79.  


STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 4-2-2 and 4-30-3  


ANTICIPATED COST OR SAVINGS TO:  
TTHE STATE BUDGET: There will be no cost to the state budget. There are no costs associated with the Code of Federal Regulations (CFR) being adopted by the department.  

LOCAL GOVERNMENTS: There will be no cost to local government. There are no costs associated with the CFR being adopted by the department.  

OTHER PERSONS: The only cost affecting other persons, is the cost of the tag for identification of swine in interstate commerce. The tags are a minimal cost, purchased through business’ in the market of selling ear tags.  

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost associated with the amendment of this rule. The amendment to this rule is the adoption of the January 1, 2001, edition of 9 CFR 71.18, 71.19, and 79.  

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs associated with the amendment of this rule. The department is merely adopting the January 1, 2001, edition of 9 CFR 71.18. Also adopting 9 CFR 71.19 and 9 CFR 79, January 1, 2001, edition.  

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
AGRICULTURE AND FOOD  
ANIMAL INDUSTRY  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3087, or  
at the Division of Administrative Rules.  

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Marilyn Leetham or Earl Rogers at the above address, by phone at 801-538-7114 or 801-538-7162, by FAX at 801-538-7126 or 801-538-7169, or by Internet E-mail at agmain.mileetham@state.ut.us or agmain.erosgers@state.ut.us  

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 12/31/2001.  

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002  

AUTHORIZED BY: Cary Peterson, Commissioner  

R58. Agriculture and Food, Animal Industry.  
R58-7-3. Livestock Markets.  
A. Standards for Approved and Non-approved Markets. The operator of a livestock market shall maintain the following standards in order to obtain, retain or renew a livestock market license:  
1. Follow procedures outlined in Section 4-30-4, and all state and federal laws and regulations pertaining to livestock health and movement.  
2. Conduct all sales in compliance with the provisions of Utah laws and rules pertaining to livestock health and movement.  
3. Furnish the Department with a schedule of sale days, which have been previously approved by the Commissioner of Agriculture and Food, giving the beginning hour.  
4. Maintain records of animals in the market in accordance with United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Brucellosis Eradication Uniform Methods and Rules, Part II, U, 2 to 4. Records must be retained for 2 years.  
5. Maintain the identity of ownership of all animals as set forth in Section 4-24-20, and these rules. All test eligible females and breeding bulls two years of age and over shall be backtagged for individual identification as outlined in 9 CFR 71.18 71.19 and 9 CFR 79, January 1, 1996; 2001, edition. The tags are not to be removed in trading channels.  
6. Permit authorized state or federal inspectors to review all phases of the livestock market operations including, but not limited, to records of origin and destination of livestock handled by the livestock market.  
7. Provide adequate space for pens, alleyways, chutes, and sales ring; cover sales ring with a leak-proof roof.  
8. Have floors in all pens, alleyways, chutes, and sales ring constructed in such a manner as to be easily cleaned and properly drained in all types of weather and to be easily maintained in a clean and sanitary condition.  
9. Maintain all alleyways, pens, chutes, and sales rings in a clean and sanitary manner.  
10. Furnish and maintain one or more chutes (in addition to the loading chute) at a convenient and usable place in a covered area, suitable for restraining, inspecting, examining, testing, tagging, branding and other treatments and procedures ordinarily required in providing livestock sanitary or health service at markets. Furnish personnel as required to assist Department or federal inspectors.
11. Provide specially designated pens or a provision for yarding for diseased animals infected with or exposed to brucellosis, tuberculosis, scabies, anaplasmosis, vesicular disease, pseudorabies, hog cholera, sheep foot rot, or other contagious or infectious disease.

12. Provide adequate facilities and service at a reasonable cost for cleaning and disinfecting cars, trucks and other vehicles which have been used to transport diseased animals as directed by the Department of Agriculture and Food or its authorized representative.

13. Do not release any diseased animal or animal exposed to any contagious, infectious or communicable disease from a livestock market until it has been approved for movement by the Department or its authorized representative.

14. Do not release any livestock from the market which have not complied with Utah laws and rules.

B. Additional Standards for Approved Markets.

1. Weigh each reactor individually and record reactor tag number, tattoo or other identifying marks on a separate weigh ticket, and record sales price per pound and net return after deducting expenses for required handling of such reactor. Restrict sale of all reactors to a slaughtering establishment where federal or state inspection is maintained.

2. Reimburse the Department monthly an amount equal to expenses incurred in providing a veterinarian at the livestock market.

3. Provide specially designated pens or a provision for yarding for animals classified as reactors, exposed, suspects or "S" branded.

4. Provide suitable laboratory space at the market as agreed between the market and the livestock market veterinarian for the conducting of brucellosis and other necessary tests.

C. Veterinary Medical Services. These services, fees, and collection procedures will be outlined and negotiated between the Department of Agriculture and Food, Livestock Auctions, and Veterinarians in contract agreements signed by each party. Any procedures, payments fees and collection methods done outside the contract terms will be worked out between the livestock market and the veterinarian.

D. Denial, Suspension or Cancellation of Registration. The Department may, after due notice and opportunity for a hearing to the livestock market involved, deny an application for registration, or suspend or cancel the registration when the Department is satisfied that the market has:

1. Violated state statutes or rules governing the interstate or intrastate movement, shipment or transportation of livestock, or

2. Made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin, or

3. Knowingly sold for dairy or breeding purposes cattle which were affected with a communicable disease, or

4. Demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule, or

5. Failed to comply with any law or rule pertaining to livestock health or movement, or

6. Operated as a livestock market without proper licensing.

E. Relating to temporary livestock market:

Temporary Livestock Market Licensees shall not be required to abide by the provisions in R58-7-3A (1,4,5,7-14), R58-7-3B (1-4), and R58-7-3C.

KEY: livestock

Notice of Continuation October 19, 2000
4-2-2
4-30-3

Agriculture and Food, Animal Industry

R58-19

Compliance Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24191
FILED: 11/05/2001, 12:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the procedures for issuing Emergency Orders or Citations as a result of information that is known by the division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare. Citation's are issued to immediately remedy a violation of Agricultural statutes or rules by a person, business, operator, etc.

SUMMARY OF THE RULE OR CHANGE: Increase the citation per violation penalty amount from $75 to $100.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-2(4)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 9 CFR-III, 303.1 through 381.207

ANTICIPATED COSTS OR SAVINGS TO:

THE STATE BUDGET: There will be no anticipated cost to the state budget. The cost will be to the person, business, or operator who violates agricultural statutes or rules.

LOCAL GOVERNMENTS: There will be no anticipated cost to local government. The cost will be to the person, business, or operator who violates agricultural statutes or rules.

OTHER PERSONS: There will be a cost to any person, persons, business, or operator who violates agricultural statutes or rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any person, persons, business, or operator who violates agricultural statutes and rules shall be assessed a penalty not to exceed $5,000 per violation in a civil proceeding, and in a criminal proceeding is guilty of a class B Misdemeanor.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT: THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses would only occur if they violate agricultural statutes or rules. The penalty assessed would not exceed $5,000.
R58. Agriculture and Food, Animal Industry.


R58-19-1. Authority.

This rule is promulgated by the Division of Animal Industry (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(j).


(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20. Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-32-7, 4-32-16, 4-32-17, 4-31-17, 4-39-107, and 9 CFR-III 303.1 through 381.207.

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.


The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the Division, it shall: Promptly issue a written order, that includes the following information:

1. name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

2. A brief statement of findings of fact as determined by the division,

3. References to statutes or administrative rules violated,

4. The reasons for issuance of the emergency order,

5. The signature of the agency representative, and

6. A space/line for the signature of the person (a signature is not required if the person refuses).

This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

R58-19-4. Citation.

The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

1. name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

2. References to the statutes or rules violated,

3. A brief statement to the findings of fact as determined by the division,

4. A penalty or fine amount,

5. The signature of the agency representative,

6. A space or line for the signature of the person (a signature is not required if the person refuses),

7. A statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following:

<table>
<thead>
<tr>
<th>Table</th>
<th>Penalty Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$200</td>
</tr>
<tr>
<td>2</td>
<td>$2 per head</td>
</tr>
</tbody>
</table>


When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.
Agriculture and Food, Regulatory Services
R70-910
Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24200

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the requirements for voluntary registration of servicemen and service agencies for commercial weighing and measuring devices.

SUMMARY OF THE RULE OR CHANGE: Change the name of the Division Program responsible for this service to the Weights and Measures Program. Change the text in Section R70-910-5 to clarify the fee requirement for the application and renewal of registration.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-9-2

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There will be no cost to the state budget. The required application and renewal fee is the responsibility of the individual or agency applying for registration.

LOCAL GOVERNMENTS: There will be no cost to local government. The required application and renewal fee is the responsibility of the individual or agency applying for registration.

OTHER PERSONS: There is no cost or savings associated with the amendments to this rule. Fees are set through the legislative appropriations process. The amendments to this rule are merely clarifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost or savings associated with the amendments to this rule. Fees are set through the legislative appropriations process. The amendments to this rule are merely clarifications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT OF THE RULE MAY HAVE ON BUSINESSES: There will be a certification fee in accordance with the fee schedule in the annual appropriations act passed by the legislature and signed by the governor.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3087, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilyn Leetham or Brett Gurney at the above address, by phone at 801-538-7114 or 801-538-7158, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.bgurney@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Cary Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.
R70-910. Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices.
R70-910-1. Authority.
Promulgated under Section 4-9-2.

R70-910-2. Policy.
It shall be the policy of the Division of Regulatory Services, [Motor Fuel Testing and Marketing Licensing] Weights and Measures Program, of the Utah Department of Agriculture and Food to accept voluntary registration of:

A. an individual and/or
B. an agency that provides acceptable evidence that he or it is fully qualified to install, service, repair, or recondition a commercial weighing or measuring device; has a thorough working knowledge of all appropriate weights and measures laws, orders, rules, and regulations; and has possession of, or has accessible for his use, weights and measures standards and testing equipment certified by the Department of Agriculture and Food to be appropriate in design and capacity. This policy shall in no way preclude or limit the right and privilege of any qualified individual or agency not registered with the Department of Agriculture and Food to install, service, repair, or recondition a commercial weighing or measuring device.

A. "Registered Servicemen" - shall be construed to mean any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs or reconditions a commercial weighing or measuring device, and who voluntarily registers himself as such with the Department of Agriculture and Food.
B. "Registered Service Agency" - shall be construed to mean any agency, firm, company, or corporation which, for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and which voluntarily registers itself as such with the Department of
Agriculture and Food. Under agency registration, identification of individual servicemen shall be required.

C. "Commercial Weighing and Measuring Device" - shall include any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, product, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

R70-910-4. Reciprocity.

The Department of Agriculture and Food may enter into a reciprocal agreement with any other State or States that have similar voluntary registration policies. Under such agreement, the Registered Servicemen and the Registered Service Agencies of the States party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in all states party to such agreement.

R70-910-5. Registration Fee.

Upon application for and renewal of registration, the applicant shall pay to the Department of Agriculture and Food a registration fee [of $10.00 per] determined by the department pursuant to subsection 4-2-2(2) for Registered Serviceman and/or [of $50.00 per Registered Service Agency. Registration shall expire December 31 of each year, and shall be renewed annually.

R70-910-6. Voluntary Registration.

An individual or agency may apply for voluntary registration to service weighing devices or measuring devices on an application form supplied by the Department of Agriculture and Food. Said form, duly signed and witnessed, shall include certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition such devices as specified upon registration; has in possession, or available for his use, all necessary testing equipment, and standards; and has full knowledge of all appropriate weights and measures laws, orders, rules, and regulation. An applicant also shall submit appropriate evidence or references as to qualifications.


Upon receipt and acceptance of a properly executed application form, the Department of Agriculture and Food shall issue to the applicant a "Certificate of Registration," including an assigned registration number, which shall remain effective until returned by the applicant, withdrawn by the Department of Agriculture and Food, or registration expires.


The bearer of a Certificate of Registration shall have the authority to remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the Department of Agriculture and Food; place in service, until such time as an official examination can be made, a weighing or measuring device that has been officially rejected; and place in service, until such time as an official examination can be made, a new or used weighing or measuring device.


The Department of Agriculture and Food shall furnish each Registered Serviceman and Registered Service Agency with a supply of report forms to be known as "Placed in Service Reports". Such a form shall be executed in triplicate, shall include the assigned registration number, and shall be signed by a Registered Serviceman or by a serviceman representing a Registered Agency for each rejected device restored to service and for each newly installed device placed in service. Within 24 hours after a device is restored to service, or placed in service, the original of the properly executed Place in Service Report, together with any official rejection tag removed from the device, shall be mailed to the Department of Agriculture and Food, the Division of Regulatory Services, [Motor Fuel Testing and Marketing Licensing]Weights and Measures Program, 350 North Redwood Rd, PO Box 146500, Salt Lake City, UT 84114-6500. The duplicate copy of the report shall be retained by the owner or operator of the device, and the triplicate copy of the report shall be retained by the Registered Serviceman or Agency.

R70-910-10. Standards and Testing Equipment.

A Registered Serviceman and a Registered Service Agency shall submit, at least biennially to the Department of Agriculture and Food, for examination and certification, any testing equipment and standards that are used, or are to be used, in the performance of the service and testing functions with respect to weighing and measuring devices for which competence is registered. A Registered Serviceman or Agency shall not use in officially servicing commercial weighing or measuring devices any standards or testing equipment that have not been certified by the Department of Agriculture and Food.

R70-910-11. Qualification to Service Heavy Capacity Scales.

No registered service agency or serviceman shall be qualified to place in service or remove a Rejection Tag from a heavy capacity scale unless such registered service agency or serviceman has adequate testing weights certified by the Utah Department of Agriculture and Food, Division of Regulatory Services, [Motor Fuel Testing and Marketing Licensing]Weights and Measures Program. Adequate testing weights shall be deemed to be 10,000 pounds of test weights or one-fourth the capacity of the scale, whichever is less.

R70-910-12. Revocation of Certificate of Registration.

The Department of Agriculture and Food may, for good cause, after careful investigation, consideration, and due notice and process which shall include an opportunity for a hearing, suspend or revoke a Certificate of Registration, Section 4-1-5 and Section 63-46b.

R70-910-13. Publication of Lists of Registered Servicemen and Registered Service Agencies.

The Department of Agriculture and Food shall publish, and may supply upon request, lists of Registered Servicemen and Registered Service Agencies.

KEY: inspections [1997|2002]
Agriculture and Food, Regulatory Services
R70-940
Standards and Testing of Motor Fuel

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24198

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes in the text are made to clarify the intent of the rule.

SUMMARY OF THE RULE OR CHANGE: The change in Section R70-940-6 is requiring a copy of the bill of lading to accompany the delivery ticket for bulk sales of motor fuels.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-2(1)(j) and Section 4-33-4

ANTICIPATED COST OR SAVINGS TO:
✓ THE STATE BUDGET: There is no anticipated cost to the state budget. The amendment is requiring a copy of the bill of lading for bulk sales of motor fuels.
✓ LOCAL GOVERNMENTS: There is no anticipated cost to local government. The amendment is requiring a copy of the bill of lading for bulk sales of motor fuels.
✓ OTHER PERSONS: There is no cost associated to the amendments of this rule. The amendment is requiring a copy of the bill of lading for bulk sales of motor fuels.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost associated to the amendments of this rule. The amendments to this rule are merely clarifications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no cost associated to the amendments of this rule. The amendments to this rule are merely clarifications.

THE FULL TEXT OF THE RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3087, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilyn Leetham or Brett Gurney at the above address, by phone at 801-538-7114 or 801-538-7158, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at agmain.mleetham@state.ut.us or agmain.bgurney@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Cary Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.
R70-940-1. Authority and Scope.
A. Promulgated under Authority of Section 4-33-4 and Subsection 4-2-2(1)(j).
B. Scope: This rule establishes the requirements for the blending and sale of motor fuel in the state of Utah.

R70-940-2. Standards.
Motor fuels are to meet the following standards:
B. "Vapor Pressure." ASTM D-323 on Reid Vapor Pressure and ASTM's Information Document on Oxygenated Fuels, Section 4.2.1.
C. "Distillation." ASTM D-86 and ASTM revised D-4814 relative to alcohol blends (along with ASTM's Information Document on Oxygenated Fuels).
D. "Water Tolerance." ASTM D-4814.
E. "Phase Separation." Must be homogenous, no phase separation.

F. "Corrosivity." ASTM D-4814.
G. "Benzene." ASTM D-3606.
H. "Flash Point." ASTM D-93 or D-56.
J. "Sulfur." (X-ray method) ASTM D-2622, 1266, 1552, 2622 or 4294.
L. "Leads." ASTM D-3237.
M. "Cloud point." ASTM D-2500.
N. "Conductivity." ASTM D-2624.
O. "Cetane" ASTM D-976 or 4737.
P. "Cosolvents." Methanol or ethanol based fuels shall include such cosolvents as are required to increase the water tolerance of the finished gasoline blend to the level specified in R70-940-2-D above.
Q. "Method of Operation." Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment.
R. "Maintenance of Equipment." All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating condition throughout the period of such service.
S. "Product Storage Identification." The fill connection for any petroleum product storage tank or vessel supplying retail motor fuel devices shall be permanently, plainly, and visibly marked as to product contained. When the fill connection device is marked by means of color code, the color key shall be conspicuously displayed at the place of business.
R70-940-3. Labels.
All motor fuel kept, offered or exposed for sale or sold containing at least one percent by volume methanol or ethanol or ethers must be labeled in a prominent, conspicuous manner, "% METHANOL", "% ETHANOL", or "% EThERS".
A. Letters on the label must be at least 1 1/2 inches high and in contrasting colors.
B. Labels must be located on the face of each dispenser near the area designating the grade of the product.

R70-940-4. Preparation.
All storage tanks and equipment must be purged and cleansed before using methanol, ethanol or ether blend motor fuels.

R70-940-5. Water Content.
All storage tanks must be kept free from water content.

Bulk sales of all motor fuels shall be accompanied by a copy of the bill of lading and a delivery ticket containing the following information:
A. Name and address of the vendor and purchaser.
B. Date delivered.
C. Quantity delivered and the quantity upon which the price is based.
D. Identification of the product sold, including grade and indicating the percent of methanol, ethanol or ethers in the blend.
E. The above information must be available at each retail outlet and furnished to the inspector upon request.

A. Blending of motor fuels will be done only at refineries or at [qualified blending stations]retail outlets equipped with calibrated dispensers or tank blenders that [have the proper equipment to accurately measure the products to be blended] to provide adequate safety standards. The finished blend must meet the requirements of octane, vapor pressure, distillation, and other standards as outlined by ASTM.
A separate fixed tank or a method approved by the Utah State Department of Agriculture and Food shall be used for blending the "methanol or ethanol-based fuel" into the gasoline.

KEY: inspections
[August 14, 1995]2002
Notice of Continuation May 9, 1997
4-33-4

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to statute changes made in Title 58, Chapter 28, Veterinary Practice Act (see S.B. 132), allowing animal physical therapy, a new section governing that practice is being added. (DAR Note: S.B. 132 is found under 2001 Utah Laws 124, and was effective April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: Added Section R156-24a-601 regarding standards for animal physical therapy training. Added that in order for a physical therapist to perform physical therapy on an animal as provided for in Subsection 58-28-8(12)(b), the therapist must have completed the job training under the supervision of a licensed veterinarian, a quadruped anatomy course, and continuing education courses totaling 100 hours.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-24a-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Division will incur minimal costs, approximately $50, to reprint this rule once this proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.
❖ LOCAL GOVERNMENTS: Proposed amendment does not apply to local governments.
❖ OTHER PERSONS: Licensed physical therapists: if a licensed physical therapist wants to engage in the practice of animal physical therapy, costs would be incurred to obtain the required 100 hours of training. However, the Division is unable to determine an approximate cost for the 100 hours of training due to limited training options at the present time. Currently, no physical therapy school is offering training in animal physical therapy that the Division is aware of. There may be the possibility of veterinarians offering training classes, but the Division is not aware of any at the present time. However, if a licensed physical therapist did not want to engage in animal physical therapy, no costs would be incurred.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed physical therapists: if a licensed physical therapist wants to engage in the practice of animal physical therapy, costs would be incurred to obtain the required 100 hours of training. However, the Division is unable to determine an approximate cost for the 100 hours of training due to limited training options at the present time. Currently, no physical therapy school is offering training in animal physical therapy that the Division is aware of. There may be the possibility of veterinarians offering training classes, but the Division is not aware of any at the present time. However, if a licensed physical therapist did not want to engage in animal physical therapy, no costs would be incurred.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this amendment is to provide a Division rule in compliance with a new requirement in the Veterinary Practice Act, which exempts from licensure the practice of animal physical therapy
for physical therapists licensed by the Division who obtain Division-approved training. The new law and corresponding rule will likely have some impact on the businesses of physical therapists and veterinarians, but as this is a new requirement in the law, it is unknown how the two professions will be impacted by increased training required for those who desire to engage in this new practice. Ted Boyer, Executive Director

**THE full text of this rule may be inspected, during regular business hours, at:***

**COMMERCe**

**OCCUPATIONAL AND PROFESSIONAL LICENSING**

**HEBER M WELLS BLDG**

160 E 300 S

SALT LAKE CITY UT 84111-2316, or

at the Division of Administrative Rules.

**DIRECT questions regarding this rule to:**

Lynn Bernhard at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by internet E-mail at lbernhar@br.state.ut.us

**INTERESTED PERSONS may present their views on this rule by submitting written comments to the address above no later than 5:00 PM on 12/31/2001.**

**This rule may become effective on:** 01/01/2002

**AUTHORIZED by:** J. Craig Jackson, Director

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


**R156-24a-601. Animal Physical Therapy:**

In accordance with Subsection 58-28-8(12)(b), a physical therapist practicing animal massage must complete at least 100 hours of animal physical therapy training and education. The training shall consist of:

1. completing 50 hours of on the job training under the supervision of a licensed veterinarian;
2. completing a quadruped anatomy course; and
3. completing the remaining hours in continuing education.

**KEY:** licensing, physical therapy


Notice of Continuation May 12, 1997

58-24a-101

58-1-106(1)

58-1-202(1)

---

**Commerce, Occupational and Professional Licensing**

**R156-60c-502**

Unprofessional Conduct

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 24196


**RULE ANALYSIS**

**Purpose of the Rule or Reason for the Change:** The Division needs to update the American Counseling Association's Ethical Standards to the current edition

**Summary of the Rule or Change:** In Subsection R156-60c-502(19), the American Counseling Association's Ethical Standards was updated to the 1995 edition.

**State Statutory or Constitutional Authorization for this Rule:** Section 58-60-401, and Subsections 58-1-106(1) and 58-1-202(1)

**This Rule or Change Incorporates by Reference the Following Material:** Deletes the American Counseling Association's Ethical Standards, March 1988 edition and replaces it with the 1995 edition

**Anticipated Cost or Savings to:**

1. The State Budget: The Division will incur minimal costs, less than $50, to reprint this rule once this proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.

2. Local Governments: Proposed rule amendment does not apply to local governments.

3. Other Persons: Licensed Professional Counselors: The code of ethics has not changed materially enough to result in additional costs for licensees to comply. If an individual or licensee wants to obtain a copy of the code of ethics, it is available free via the Internet at: http://www.counseling.org/resources/codeofethics.htm

**Compliance Costs for Affected Persons:** The Division anticipates no additional costs will be incurred as a result of this proposed amendment since the code of ethics has not changed materially enough to result in additional costs for licensees to comply.

**Comments by the Department Head on the Fiscal Impact the Rule May Have on Businesses:** The purpose of this amendment is to update a reference to the current edition of the applicable code of ethics. Therefore, this amendment will have no impact on businesses. Ted Boyer, Executive Director

**The Full Text of this Rule May be Inspected, during regular business hours, at:**

**COMMERCe**

**OCCUPATIONAL AND PROFESSIONAL LICENSING**

**HEBER M WELLS BLDG**

160 E 300 S

SALT LAKE CITY UT 84111-2316, or

at the Division of Administrative Rules.
DIRECT QUESTIONS REGARDING THIS RULE TO:
Dan S Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@br.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Professional Counselor Licensing Act Rules.
R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:
(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;
(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);
(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;
(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;
(5) failing to establish and maintain appropriate professional boundaries with a client or former client;
(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;
(7) engaging in sexual activities or sexual contact with a client with or without client consent;
(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;
(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;
(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;
(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;
(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;
(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;
(14) exploiting a client for personal gain;
(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;
(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;
(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;
(18) failure to cooperate with the Division during an investigation; and
(19) failure to abide by the provision of the American Counseling Association's Ethical Standards, [March 1988][1995], which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, professional counselors[4]
June 19, 2001[2002]
Notice of Continuation April 6, 2000
58-60-401
58-1-106(1)
58-1-202(1)

-------------------------

Commerce, Occupational and Professional Licensing
R156-66a

Amateur Boxing Fund Grant Rules

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 24202

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to delete this rule in its entirety as it was created for a one-time only grant that was authorized by the 1999 Legislature to be used for amateur boxing and the time period for that money to be used has lapsed.

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

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 1999 Utah Laws 310, Item 40 (was effective 3/2/1999)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Division anticipates no costs or savings associated with this rule filing since the time period for the grant has lapsed and the Division is no longer involved in the regulation of boxing in Utah.
LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.

OTHER PERSONS: The Division has determined that there will be no costs or savings associated with this rule filing since the time period for the grant has lapsed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division has determined that there will be no costs or savings associated with this rule filing since the time period for the grant has lapsed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this rule change is to delete an unnecessary rule, which was initially promulgated to administer a one-time legislative grant for amateur boxing. Amateur boxing will have a business impact in that it will no longer have grant monies to support their activities, but that impact is the result of a legislative decision, and not this rule change. Ted Boyer, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@br.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-66a-101. Title.
These rules are known as the "Amateur Boxing Fund Grant Rules".

(1) "Amateur boxing", as used in 1999 Utah Laws Chapter 310, Item 40, means a live boxing contest where the contestants participate for a non cash prize of nominal value, as defined in Subsection 58-66-102(10)(b) of the Utah Professional Boxing Regulation Act.
(2) "Applicant" means a nonprofit entity within the state as defined in this section.
(3) "Costs of travel", as used in the 1999 Utah Laws Chapter 310, Item 40, means meals, lodging and transportation associated with participation in an amateur boxing contest.

(4) "Grant", as used in the 1999 Utah Laws Chapter 310, Item 40, means the distribution of fund monies as authorized in 1999 Utah Laws Chapter 310, Item 40 of the Utah Code Annotated.
(5) "Nonprofit entity within the state", as used in 1999 Utah Laws Chapter 310, Item 40, means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

R156-66a-103. Authority - Purpose.
These rules are adopted to enable the Division to implement the provisions of 1999 Utah Laws Chapter 310, Item 40, to facilitate the distribution of General Fund monies to nonprofit entities for the promotion of amateur boxing.

(1) In accordance with 1999 Utah Laws Chapter 310, Item 40, each applicant for a grant shall:
(2) Submit an application in a form prescribed by the division.
(3) Provide documentation that the applicant is a nonprofit entity within the state.
(4) Document the following:
(i) The financial need for the grant;
(ii) How the funds requested will be used to promote amateur boxing;
(iii) Provide expense receipts for expenditures disbursed prior to the application but no earlier than January 1999;
(iv) Provide a signed contract defining how the requested monies will be spent and subsequent documentation on how the monies were spent.

Grants will be awarded based on the following general criteria:
(1) The applicant's past participation in amateur boxing contests;
(2) The scope of the applicant's current involvement in amateur boxing contests;
(3) The demonstrated need for the funding; and
(4) The involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

KEY- grants, amateur boxing
November 16, 1999
1999 Utah Laws 310, Item 40

Education, Administration
R277-502
Teacher Certification Procedures
NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24262
FILED: 11/15/2001, 17:47

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendments to this rule is to update terminology, add information about professional development,
and provide information about Computer-Aided Credentials of Teachers in Utah Schools (CACTUS).

SUMMARY OF THE RULE OR CHANGE: The rule changes "certificate" terminology to "license," defines new terms, makes provisions for professional development, and updates information on level I, II, and III licenses.

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

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: There are no anticipated cost or savings to state budget. The Legislature appropriated funds for professional development. Other changes are not budget-related.
- LOCAL GOVERNMENTS: This rule references and provides some explanation for professional development, though it is mandated in law. School districts make individual determinations of how they will supplement the state appropriation to pay teachers. Consequently, costs may vary.
- OTHER PERSONS: There are no anticipated cost or savings to other persons. The state and school districts will pay for professional development. There are no costs associated with wording changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Except for professional development, explained previously, there are no compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO: Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

A. "Board" means the Utah State Board of Education.
B. "License" means [a] Utah Professional Educator License (license) authorization issued by the Board which attests to the fact that the holder has satisfied the requirements for employment in the public school system.
C. "License areas of concentration (license areas)" means specific areas identified by the Board in which an individual has adequate training as determined by the USOE authorizing the person to teach in that area. Completion of a particular preparation program offered by a university/college or of a Board-approved program verifies that qualifications for a license area are satisfied.
D. "Endorsement" means a qualification in a specialty course or area which is given by the Board based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.
E. "Renewal" means [-] reissuance of extending the length of a license consistent with R277-501.
F. "Appropriate employment" means full-time experience, in the field for which the [license] is issued, in a public or accredited private or parochial school.
G. "Special assignment teacher" means a teacher assigned to:
   (1) alternative school settings [with self-contained classrooms] in which the teacher must teach several three or more subjects;
   (2) teach homebound students with the expectation that several subjects may be covered by the same teacher; or
   (3) necessarily exist small or rural schools with limited faculty and enrollment in which teachers may teach more than three or more core subjects.
H. "Letter of Authorization" means a temporary license or approval issued to a district for an individual who has not completed the requirements for a level 1, 2, or 3 license, such as a student teacher or a person hired to perform professional services on a limited basis when licensed or properly endorsed personnel are not available.
I. "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.
J. "State Approved Endorsement Plan (SAEP)" means a plan in place for a licensed educator working to complete the requirements of an endorsement.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-10(4) which gives the Board power to issue educator certificates, licenses, and Section 53A-17a-107(2) which requires the Board to establish a percentage of district's professional staff to be certified in the area in which they teach for the district to receive full state funding.
B. This rule specifies the types of [certificate] levels and license areas available and procedures for obtaining [certificate] [license required for employment as a] licensed educator in the public schools of Utah. All licensed educators employed in the Utah public schools shall be licensed consistent
with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

A. The Board uses the approved program approach to [teacher education] educator preparation and [certification]. This involves licensing which includes:
   1. the development of [teacher education] educator preparation programs by [un]post-secondary institutions in accordance with established rules and procedures;
   2. the official review and evaluation of each institutional program in accordance with standards adopted by the Board and the subsequent approval of a program if standards are met;
   3. approval of applicants for licensing, whether students in post-secondary institutions, individuals with out-of-state licenses, or individuals in other circumstances, prior to their significant unsupervised access to students.

   (1) [certification] licensing by the Board of an applicant for certification upon completion of an approved program;
   (2) the issuance, by the Board, of an educator [basic certificate] license to [teacher education] educators. That certificate shall be valid for a [standard certificate] level 2 or level 3 license upon demonstration of competence during employment.
B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of [certification] licensing.

A. Temporary license holders authorized by the Board upon request of a school district shall be responsible for professional development consistent with this rule.
   1. Individuals authorized by the Board shall complete professional development annually.
      (a) The proposed credit shall be approved by the supervising principal.
      (b) Individuals who do not meet the minimum yearly requirement shall not be approved by the Board for employment in successive years by a school district.
      (c) Professional development credit for educators employed under letters of authorization shall be completed by August 15 of each year for which the individual was employed and shall be submitted to the employing school district on a form provided by the USOE.
B. Individuals employed under letters of authorization and working toward a level 1 license or an endorsement may use the same credit or activities for required professional development.

A. An initial [certificate] license, the [Basic Certificate] level 1 license, is issued to an individual who is recommended by a Board-approved [teacher education] educator preparation program or approved alternative preparation program.
   1. The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and met [certification] licensing standards in the [certification category] license areas for which the individual is recommended.

B[(1)[2]] The [Basic Certificate] level 1 license is issued for four years. It may be extended for one additional year upon the employing school district's recommendation, if the Basic Certificate holder requires additional professional growth and assistance before a judgment about recommending a Standard Certificate can be made.
   (2) Employing school districts and [teacher education] preparation institutions shall cooperate in making special assistance available for [teacher education] holding Basic Certificate level 1 license holders. The resources of both may be used to assist those [teacher education] educators experiencing significant problems in teaching.
   The institution in closest proximity to the employing school district is the first choice for district involvement; however, the school district is encouraged to make a cooperative arrangement with the institution from which the [teacher education] graduated.

GB. A [Standard Certificate] level 2 license may be issued by the Board to [the holder of a B[asic C]ertificate] a level 1 license holder upon the recommendation of the employing school district with input from a teacher preparation institute.
   1. The recommendation shall be made following the completion of two [three] years of successful, professional growth and [teacher] educator experience and before the [Basic Certificate] level 1 license expires.
   2. The [Standard Certificate] level 2 license shall be revalidated renewed for successive five year periods if the holder verifies at least one half time appropriate employment in education for at least three years during each five year interval consistent with R277-501. Otherwise, the certificate may only be renewed in accordance with R277-502-8.
   3. A level 3 license may be issued by the Board to a level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a doctorate in the educator's field of practice.
      1. It is valid for seven years unless suspended or revoked for cause by the Board.
      2. The level 3 license shall be renewed for successive seven year periods consistent with R277-501.

[1][E][D] [Basic and Standard Certificate] licenses expire on June 30 of the year shown on the face of the [certificate] license and may be renewed any time after January of that year. Responsibility for securing [revalidation or] renewal of the [certificate] license rests upon the holder.

   [A][H]. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following [certificate] license, a person shall hold a valid [certificate] license issued by the Board in the respective [category] license areas:
      1. Preschool Special Education:
         (a) Early Childhood Education;
         (b) Elementary [Teaching] Education;
         (c) Secondary [Teaching] Education;
         (d) Administrative/Supervisory;
         (e) Special Education;
         (f) Communication Disorders;
School Counselor, School Psychologist, and School Social Worker; and

(b) Library Media; and

(II) Applied Technology Education

Student teachers and interns shall also hold valid certificates issued by the Board.

B. Licensed educators may be authorized by the Board for employment in the public schools under the following programs:

1. A license earned through a Board-approved post-secondary educator education program.

2. The individual seeking a license shall be approved by the post-secondary program personnel following completion of a USOE-approved license area program.

(b) The program shall require university/college students to satisfy the requirements of Section 53A-3-410, criminal background check, prior to having significant unsupervised access to students. This may include review and approval by the Utah Professional Practices Advisory Commission (UPPAC), consistent with its rules and policies, prior to classroom experience.

(2) alternative educator preparation consistent with R277-503.

(3) eminence, consistent with R277-511.

(2)C. Under prepared educators:

1. If a licensed secondary or middle education teacher is assigned in a subject area for which that teacher is not endorsed, the employing school district shall request a Letter of Authorization from the Board to continue the teacher's assignment.

2. Educators who are licensed but working out of their endorsement area shall request and prepare a State Approved Endorsement Plan (SAEP) to complete the requirements of an endorsement with a USOE education specialist.

(G2)D. Special assignment teachers or educators in other similar circumstances shall hold a Basic or Standard Certificate with endorsement(s) in one or more core curriculum subjects plus have completed not fewer than (nine quarter|six semester hours of state-approved college/university or in-service course work) 100 professional development points in each of the subject areas in which they are assigned.

(G2)E. A teacher may make application for an exemption of a specific subject endorsement consistent with 53A-6-701(5).

(a) Under 53A-6-701(5)(c), the evaluation shall reflect the ability of the teacher to teach the subject matter, including the required level of subject matter mastery.

(b) Exemptions granted are only for the specific class assigned; they do not allow the teacher exemption in the general subject area.

(c) Special education resource teachers assigned to teach academic subjects may apply for both a special education exemption and an academic subject exemption if the criteria are met in both areas.

(d) The exemption is valid for the duration of the specific class assignment.

E. Special assignment educators not meeting the minimum professional development requirements, shall be placed on an SAEP.

BIE. Individuals applying for a certificate in any category with a specific license area shall meet the specific requirements for the specific certificate designated program.

C. C. Certificates may be endorsed to indicate qualification in a specialized course subject or content area in any category of certification. Endorsements that are required in a certification category are specified in the requirements for that certification category.

An endorsement without a current certificate/license is not valid for employment purposes.

H. Student teachers and interns shall also hold valid temporary student teacher or intern licenses issued by the Board.

R277-502-6. [Certification]Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A [Basic Certificate for teaching] level 1 license may be issued to a graduate of an four-year teacher educator preparation program in another state which was, at the time of the applicant's graduation, approved by that state on the basis of standards contained in Standards for State Approval of Teacher Education, or equivalent standards.

1. Standards are available in the USOE Licensing Section or on the NCATE website.

2. The institution conducting the teacher preparation program must be accredited by the National Council for Accreditation of Teacher Education (NCATE) or one of the six major regional accrediting associations.

3. If the applicant has one or more years of previous teaching experience, a [Standard Certificate for teaching] level 2 license may be issued upon the recommendation of the employing Utah school district after at least one year, but no more than three years of teaching experience in the state.


A. The [Basic Certificate] level 1 license shall be issued for three years and renewed consistent with R277-501-4. After four years a teacher shall either be recommended for a [Standard Certificate] or qualify for renewal under one of the following:

1. A one year extension under R277-502-4(D)(1).

B. A teacher who is not recommended for the [Standard Certificate] may apply for employment in another school district. If that school district is willing to employ the individual as a teacher, the Basic Certificate may be renewed for an additional two year period. These shall be no extensions of the Basic Certificate period beyond a total of five years.

C. If more than five years elapse before the Basic Certificate holder has completed a minimum of two years of active teaching, renewal credit may be required.


A. [Basic Certificate] level 2 or level 3 license may be revalidated/renewed in five or seven year cycles under the requirements of consistent with R277-502-4(D)(1) or R277-501-5.

B. The [Standard Certificate] which have expired may be renewed by successfully completing, within the five year period prior to renewal, nine quarter hours of graduate or graduate credit. Renewal must meet all requirements for the appropriate license category. Renewal activities shall be beneficial as determined by the Utah State Office of Education Certification Section and related to the education assignment or area of professional preparation.

(1) College credit. Credit for lower division courses may be awarded with the prior approval of the Board or its designee. Two semester hours of credit are awarded for one each school year of a minimum of half time, contract teaching experience. Official transcripts and grade reports verifying completion of college course
work become a permanent part of the file maintained on each
certificated individual.

C. Credit hours for renewal of a certificate may not be held
over from one renewal period to the next unless they are earned
during the year that a certificate expires and are not needed for the
current renewal. Such hours may be carried over to the next renewal
period.

Schools (CACTUS).

A. CACTUS maintains public and protected and private
information on licensed Utah educators.

(1) Public information includes name, educational
qualifications, degrees earned, and current assignment (if
applicable).

(2) Private or protected information includes such items as
home address, date of birth, social security number, and any
disciplinary action taken against an individual's license.

B. A CACTUS file is opened on a licensed Utah educator
when:

(1) the individual's fingerprint cards are submitted to the
USOE, or

(2) the USOE receives an application for a license from an
individual seeking licensing in Utah.

C. The data in CACTUS may be changed as follows:

(1) Authorized USOE staff or designated school district staff, if
data is demographic.

(2) Licensing information including endorsements, license areas,
degrees, by USOE staff.

(3) Work experience by employing school district for current
school year only;

D. Licensed individuals may view personal data if registered
with the Utah Education Network (UEN). An individual may not
change or add data.

E. Individuals currently employed by public, private or
parochial schools under letters of authorization are included in
CACTUS. Interns may be included on CACTUS.

F. Designated individuals have access to CACTUS data:

(1) A licensed individual may view his own file.

(2) Designated USOE staff may view or change CACTUS files
on a limited basis with specific authorization.

(3) For employment or assignment purposes only, designated
district or school staff members may access data on individuals
employed by their own districts or data on licensed individuals who
are not currently employed by public schools, charter schools, some
private and parochial schools and ATCs.


A. The Board, or its designee, shall establish a fee schedule for the
issuance, [revalidation,] and renewal of [certificate] licenses and
endorsements consistent with 53A-6-105. All endorsements to
which the applicant is entitled may be issued, [revalidated,] or
renewed with the same expiration date for one
[certification licensing fee. The renewal [or validation] of endorsements at different times may require the payment(s) of a
renewal fee for each [certificate] endorsement.

B. If insufficient credit is presented for a full five year
certificate, the full fee shall, nevertheless, be charged. An additional
fee shall be charged if credit is later presented to extend the
certificate to a full five year period. A fee may be charged any time
credit is submitted for license renewal.

C. An endorsement may be added at any time, and unless the
[teaching certificate] license is reprinted, there shall be no charge. If a
new [certificate license is issued, a fee shall be charged.

KEY: professional competency, [teacher certification] educator
licensing
Notice of Continuation September 12, 1997
Art X Sec 3
53A-6-105
53A-1-401(3)
[53A-17-407(2)]

Education, Administration

R277-717
Math, Engineering, Science
Achievement (MESA)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24263
FILED: 11/15/2001, 17:48

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to the rule seek to more clearly identify targeted recipients of services, streamline monitoring and reporting, and clarify terms.

SUMMARY OF THE RULE OR CHANGE: The changes clearly designate "minority and female students" as recipients of MESA services. The MESA Review Committee is better defined. Unnecessary language is deleted.

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

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There is no anticipated cost or savings to state budget. Funding from the state to MESA students is not affected by this rule.

LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. The amount of federal funds that will be received by school districts is not changed by this rule.

OTHER PERSONS: Districts may now identify different recipients to serve due to these amendments. Some different students may now receive funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs for persons identified to participate in MESA programs or services.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835,
by FAX at 801-538-7768, or by Internet E-mail at
clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.
R277-717-1. Definitions.
A. "Board" means the Utah State Board of Education.
B. "Designated Minority Students" means African American students, Asian students, Native American/Alaskan students, Hispanic/Latino students, or Pacific Islander students.
C. "District or School Plan" means a plan outlined in writing, including budget and evaluation components developed by each school district receiving MESA funding or, if so determined by the district, by each recipient school.
D. "Math, Engineering, Science Achievement (MESA)" program means a course or courses offered during the regular school day or a club held after school that involves identified students and addresses identified district objectives with designated minority and all female students.
E. "MESA Public Education Funding Application Review Committee" means a committee composed of [the MESA coordinators in school districts that received MESA funds in the previous fiscal year] members as follows: Coalition of Minorities Advisory Committee (CMAC) (4), school districts (3), USOE staff (2); higher education members of the Math, Engineering, Science Achievement/Science, Technology, Engineering Program (MESA/STEP) Advisory Board(2).
F. "USOE" means the Utah State Office of Education.

A. This rule is authorized Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, Section 53A-4-202 which assigns to the Board the responsibility for developing standards and administering funds for a program promoting educational excellence, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-121 which appropriates funding for programs for at risk youth.
B. This rule establishes standards and procedures to direct recipient districts or schools to develop plans to encourage the participation of underrepresented minority and all female students who traditionally have participated in math, engineering, and science classes disproportionately to white males.

A. District or school plans shall identify objectives and activities to address MESA objectives.
B. The objectives of the MESA organization are:
(1) to increase the number of designated minority and all female students who pursue course work in mathematics, engineering, and science areas;
(2) to provide a program that will motivate designated minority and all female students to take better advantage of existing educational opportunities;
(3) to increase graduation rates of designated minority and all female underrepresented students from high school;
(4) to strengthen the self-image of designated minority and all female students relating to their success in mathematics and science courses, and to enable them to become successful role models for other students;
(5) to provide designated minority and all female students the opportunity to relate and associate with successful role models; and
(6) to coordinate the efforts of public schools, colleges and universities, the USOE, industries, professional and community groups, and others in the development and maintenance of academic support programs to increase the participation of designated minority and all female students in the fields of mathematics and science.
C. Courses shall include secondary courses that place [large] designated minority and all female students on a college preparation track for post high school opportunities in mathematics and science.
D. Examples of MESA activities include:
(1) regularly scheduled after-school meetings with advisors to hear guest presenters;
(2) tutoring sessions, particularly in mathematics, and including study aids;
(3) field trips;
(4) hands-on activities designed to introduce students to career possibilities, curriculum options or additional courses of study;
(5) exposure to career opportunities in math, engineering, and science, including teaching in these fields as a potential career;
(6) community service designed to address school interest and attendance issues as well as to introduce designated minority and all female students to math, science, engineering-related businesses/activities and opportunities for high school and the future; and
(7) internships or work experiences in identified areas which may be encouraged by student stipends or academic credit or both.
E. A MESA plan shall include an [assessment or evaluation component which annual report to the USOE which shall include:]
(1) may be funded and conducted by an outside evaluator;
(2) may be conducted internally;
(3) may request assistance from the USOE;
(4) shall include:]
(la) an accounting for funds spent with objectives identified in the plan;
(1b) a program narrative; and
(1c) specific numbers or examples of increased participation or success in math, science, engineering courses/activities by designated minority and all female students.

   A. Budget items shall be tied to objectives.
   B. The budget may include payments to compensate schools for school fees directly related to successful participation by designated minority or all female students in identified MESA courses or activities.
   C. Districts or schools are encouraged to consider additional course alternatives for identified students including:
      (1) ATC classes;
      (2) community school classes;
      (3) concurrent enrollment;
      (4) advanced placement courses.

   A. Plan applications shall be submitted annually by school districts.
   B. Plan applications shall be submitted to the USOE on forms provided by the USOE and consistent with USOE timelines.
   C. State funding may require matching funding from local or federal sources. Applications may require identification of matching funds.
   D. [Districts shall submit applications consistent with this rule and compete for existing funds. Final funding decisions shall be made by the MESA Public Education Committee.] The MESA Public Education Funding Application Review Committee shall make recommendations to the Board for approval of program funding.

   A. Continued funding shall be determined by USOE review of program evaluations.
   B. Continued funding shall consider the persistence and regularity of efforts in conjunction with increased numbers of successful students in identified courses and activities.
   C. MESA courses and activities shall be open to interested participants of both genders and all ethnicities. Continued or increased funding shall be based on successful participation of identified minority and female students.
   D. Development of a MESA plan or resulting programs are appropriate career ladder projects under R277-526. District career ladder funding could be counted as matching local funding.

KEY: minority education, mathematics, engineering, science [August 1-2004][4]
Art X Sec 3
53A-1-401(3)

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being repealed because the control and governance of applied technology centers is no longer under the State Board of Education.

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

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

ANTICIPATED COST OR SAVINGS TO:
   ☑ THE STATE BUDGET: At this time, there are no anticipated costs or savings to state budget because the program will continue under the governance of the State Board of Regents. Budgets will be controlled by that Board.
   ☑ LOCAL GOVERNMENTS: Given the information we have, any costs or savings to local government resulting from the changed governance will be under the control of the State Board of Regents.
   ☑ OTHER PERSONS: Given the information we have, any costs or savings to other persons resulting from the changed governance will be under the control of the State Board of Regents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Given the information we have, any compliance costs resulting from the changed governance will be under the control of the State Board of Regents.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
   EDUCATION ADMINISTRATION
   250 E 500 S
   SALT LAKE CITY UT 84111-3272, or
   at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
   Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

attles, Administration
R277-902
Applied Technology Center Tuitions

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 24254
FILED: 11/15/2001, 17:38
R277. Education, Administration.

R277-902. Applied Technology Center Tuitions.

R277-902-1. Definitions.

A. “Board” means the Utah State Board of Education and for Applied Technology Education.

B. “ATC” means Applied Technology Center.

C. “Fee” means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money, goods or equipment.

D. “Provision in lieu of fee waiver” means an alternative to fee payment and a subsequent waiver of fee payment.

E. “Scholarship” means an award based on performance, special skills, achievement(s), or any combination of the above. Scholarships may include trainee stipends, tuition and fee waivers and prizes to students or potential students.

F. “Tuition” means payment for educational services, usually calculated in the form of payment for a specific class or for hours of instruction.

G. “Waiver” means the release from the requirement of payment of a fee or tuition and from any provision in lieu of fee payment or tuition.

H. “Grant-in-aid” means a payment to the student based on need to be used for tuition or required educational fees or both. Scholarships and waivers shall be awarded consistent with the mission and purpose of the ATC’s as outlined in R277-904.

R277-902-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 1 which vests general control and supervision of public education in the Board, Section 53A-15-203, which places the control and management of applied technology centers under the Board for Applied Technology Education and Subsection 53A-1-401(2) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish a tuition formula for ATC’s and to establish parameters for tuition waivers, fee waivers, scholarships and grants in aid.

R277-902-3. Tuition Limits.

A. Applied technology centers shall charge tuitions commensurate with recovering instructional costs for salaries, benefits, overhead and equipment depreciation to operate.

B. The Board shall set tuition for Utah residents and for non-residents for applied technology instruction and support services. Non-resident tuition and fees shall be based on the full cost of instruction.

C. The Board shall develop operational procedures for tuition exemptions, scholarships, and waivers.

R277-902-4. ATC Responsibility for Fee Waiver and Scholarships.

A. Each local ATC board shall develop a fee waiver and scholarship policy consistent with this rule.

B. This local policy shall be submitted annually in June of each year to the Board for approval.

C. Each local ATC board shall consider the following in setting and submitting its policy:

   1. Financial aid as a factor in recruiting and retaining students;
   2. Financial aid as a factor in center costs, revenue sources, and financial planning;
   3. Financial aid as a factor in course offerings to students;
   4. The rationale, purpose and requirements of student financial aid;
   5. Administrative costs, responsibilities, and resources in student financial aid programs; and
   6. Students’ ability and willingness to comply with the ATC financial aid policy.

D. The local ATC financial aid policy shall include procedures to ensure that:

   1. Students who are granted financial aid are not treated differently from other students or identified to persons who do not have both a right and a need to know;
   2. Financial aid is available to all students on a non-discriminatory basis in accordance with the written ATC policy and based on available funds;
   3. Students are informed of their rights and responsibilities regarding financial aid; and
   4. Eligibility standards and requirements for financial aid are clearly defined, available to students and uniformly applied.

E. Each ATC board shall appoint a committee to set standards for financial aid. Such standards shall be approved annually by the local ATC board.

F. Local ATC financial aid programs shall provide for:

   1. Operational procedures for application, selection and timely notification to students regarding financial aid;
   2. Adherence to standards in selection of students for financial aid;
   3. Broadest possible use of funds while providing adequate funding for each recipient of financial aid;
   4. Students to pay tuition, fees or both in installments over a pre determined time period if the student meets criteria established by the ATC board; and
   5. Assistance to students to encourage better management of financial resources.

G. The local ATC Fee Waiver and Scholarship policy shall include a timely appeal process for students denied financial aid excluding the opportunity to appeal to the local board or a designee.

R277-902-5. Lost or Damaged Center Property.

A. Students shall be responsible to repay the center for lost or damaged school property, including books, equipment and supplies.

B. Scholarships, fee waivers, provisions in lieu of fee waivers or grants-in-aid shall not relieve students of the responsibility under Subsection A.

C. Local ATC boards may set standards for lost and damaged property and may pursue reasonable methods to obtain compensation for damage or loss.

R277-902-6. Local ATC Board Responsibilities to the Board.

A. A local ATC budget shall include an amount specifically designated for adult student financial aid.

B. Beginning in FY 1992-93, each ATC board shall report the following to the Board:

   1. The names and total numbers by categories of the students granted waivers or given financial aid by the local ATC board;
   2. A copy of the local ATC’s fee waiver and scholarship policy, including criteria for fee or tuition waivers;
   3. A copy of the local ATC’s fee schedule;
   4. A copy of the ATC’s financial aid policy available to students; and
(5) A copy of the fee waiver criteria and policy distributed to
students.

KEY:  adult education, educational tuitions 1993
Notice of Continuation September 12, 1997
Art X-See J 53A-15-203
53A-1-401(3)

Education, Administration
R277-903
Career Ladders for Applied Technology
Centers

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 24255
FILED: 11/15/2001, 17:39

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is
being repealed because the control and governance of
applied technology centers is no longer under the State Board
of Education.

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

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

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: At this time, there are no anticipated
costs or savings to state budget because the program will
continue under the governance of the State Board of Regents.
Budgets will be controlled by that Board.

LOCAL GOVERNMENTS: Given the information we have, any
costs or savings to local government resulting from the
changed governance will be under the control of the State
Board of Regents.

OTHER PERSONS: Given the information we have, any costs or
savings to other persons resulting from the changed
governance will be under the control of the State Board of
Regents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Given the
information we have, any compliance costs resulting from the
changed governance will be under the control of the State
Board of Regents.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR
BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835,
by FAX at 801-538-7768, or by Internet E-mail at
clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY
SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER
THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and
Legislation

R277. Education, Administration.
[R277-903. Career Ladders for Applied Technology Centers.]
R277-903-1. Definitions.
A. "Board" means the Utah State Board of Education/State
Board for Applied Technology Education.
B. "Career Ladder" means a compensation system developed
by a Center, with advice from citizens, educators, and
administrators, which is designed to require, recognize, and reward
quality performance of educators.
C. "Career Ladder Levels" means a component of a Career
Ladder consisting of multiple levels, to which an educator is
assigned. Assignment, progress, and compensation within the
system are dependent upon individual qualifications.
D. "Center" means applied technology center.
E. "Educator" means a certified person who is paid on the
teachers' salary schedule and whose primary function is to provide
instructional or counseling services to students in a Center.
F. "Educator Evaluation System" means a procedure developed
by a Center, with advice from citizens, educators, and
administrators, which provides a reasonably fair, consistent, and
objective evaluation of educator performance.
G. "Educator Performance" means the functional ability of an
educator as determined by instructional competency, teaching
effectiveness, student progress, craft or advisory committee review
results, or job placements.
H. "Extended Contract Days" means an element of a Career
Ladder plan which provides for additional paid, non-teaching days
beyond the regular school year.
I. "Individual Extended Contract" means the extension of an
individual contract of an educator.
J. "Job Enlargement/Extra Pay for Extra Work" means an
element of a career ladder which provides additional compensation
to individual educators, or teams of educators, for instruction and
curriculum-related responsibilities which are in addition to regular
duties.
K. "LEA" means a local education agency, which includes an
ATC, and Utah Schools for the Deaf and the Blind.
   A. Under the direction of the Center Board, each Center shall establish a Career Ladder Committee consisting of citizens, educators, and administrators.
   B. The committee shall develop, implement, and evaluate the Center's Career Ladder plan.
   C. The Career Ladder plan shall include provisions for communication between the Career Ladder committee and educators, administrators, and citizens.
   D. Applications for Career Ladder funds shall include documentation that the plan was developed with cooperative action among citizens, educators, administrators, and the Center Board.

R277-903-5. Career Ladder Plan Content: Distribution of Funds.
   A. A Career Ladder plan may provide for performance bonuses.
   B. If an LEA chooses to use Career Ladder money for performance bonuses for teachers, the center shall have or develop a plan that meets the following performance bonus standards:
      (1) The center plan shall describe qualification procedures;
      (2) The center plan shall estimate the number of educators affected;
      (3) The center plan shall include a remuneration schedule for performance bonuses;
      (4) The center plan shall not include requirements of additional teaching duties, responsibilities, or minimum years of service;
      (5) Plans may provide for teams of educators to develop and carry out a program and share performance bonuses based upon qualitative and quantifiable results.
   C. Each plan shall present a Career Ladder level system with multiple levels beyond the standard certificate. The plan shall include nomenclature, criteria for placement, job descriptions, and a remuneration schedule for Career Ladder levels and
d. Each plan may include funds for Job Enlargement/Extra Pay for Extra Work. If this segment is included in the Career Ladder plan, the plan shall describe the procedures, based upon a job description and application process, for assigning these responsibilities. The plan shall describe the procedures, based upon a job description and application process, for assigning these responsibilities.
   E. The plan may include funds for extended non-teaching days for all eligible educators for instruction and curriculum-related responsibilities which address Center goals. If this segment is included in the Career Ladder plan, the plan shall include a detailed explanation for the use of the Career Ladder funds for extended contract days.

   A. Each Center shall use an educator evaluation system to evaluate its educators for participation, placement, and advancement on the Career Ladder. The educator evaluation system shall comply with Section 53A-10-101 through 111, which requires the evaluation of educators in the public schools.
   B. A written description of the system shall be available to educators and shall include:
      (1) Evaluation criteria;
      (2) Participation by educators in the development and review of evaluation instruments;
      (b) factors upon which an educator shall be evaluated shall be
specified:
   — (c) a minimum of two lines of evidence for evaluation. The
     selected lines of evidence shall include administrative evaluation
     and either student competency or job placement. Instruments used
     for an evaluation shall be specified.
   — (2) evaluation process:
     — (a) an educator shall be informed of the type and frequency of
       evaluation;
     — (b) an educator shall receive written notification of evaluation
       results on request;
     — (c) review of an evaluation shall be provided for; and
     — (d) post-evaluation interviews shall be conducted with the
       educator.
   — C. The plan shall define the roles of administrators, educators,
   and the Center Board in implementing the system.

R277-903-7. Career Ladder Plan Content: Curriculum Reform
Requirements.
   — The Career Ladder plan shall describe how the Career Ladder
   contributes to the implementation of Utah’s Master Plan for
   Vocational Education as approved by the Board.

   — A. Career Ladder plans shall be reviewed at least annually.
   — B. The plans shall specify the reviewing body, procedures,
     time schedules, and areas of review.

R277-903-9. Reports.
   — The Board shall require an annual report from each
     participating Center due on June 30 of each year. The report shall
     certify that all aspects of the plan have been implemented as
     approved and that funds have been distributed according to the plan.
     The report shall include the annual evaluation report and other
     information required by the State Superintendent or a designee.

R277-903-10. Negotiations Between Local Boards and Employee
Associations.
   — A. Neither the Career Ladder appropriation to a Center nor the
     Board’s Career Ladder standards are subject to negotiations between
     a local board and its employees.
   — B. A Center may only negotiate with its teachers under 53A-
       17a-124(2)(c).

KEY: education, facility, professional competency

1992
Notice of Continuation October 20, 1997
Art X Sec 3
53A-1-401(3)
53A-17-204
53A-15-202(1) and (2)
53A-17a-124]

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 24257
FILED: 11/15/2001, 17:39

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is
being repealed because the control and governance of applied technology centers is no longer under the State Board of
Education.

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

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

ANTICIPATED COST OR SAVINGS TO:
• THE STATE BUDGET: At this time, there are no anticipated
costs or savings to state budget because the program will
continue under the governance of the State Board of Regents.
Budgets will be controlled by that Board.
• LOCAL GOVERNMENTS: Given the information we have, any
costs or savings to local government resulting from the
changed governance will be under the control of the State
Board of Regents.
• OTHER PERSONS: Given the information we have, any costs
or savings to other persons resulting from the changed
governance will be under the control of the State Board of Regents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Given the
information we have, any compliance costs resulting from the
changed governance will be under the control of the State Board of Regents.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR
BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835,
by FAX at 801-538-7768, or by Internet E-mail at
clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY
SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NOT LATER
THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

Education, Administration
R277-904
Applied Technology Center and Service Region Standards and Operating Procedures

R277. Education, Administration.

R277-904. Applied Technology Center and Service Region Standards and Operating Procedures.

R277-904-1. Definitions.

A. "Adult ATC/ATCSR student" means a student enrolled in an approved applied technology center or service region program who is not at the same time enrolled in a regular high school program.

B. "Applied technology instruction" means instruction approved by the Board and the State Board of Regents through the Joint Liaison Committee, identified by a Classification of Instructional Programs (CIP) code number, which is designed to prepare individuals for gainful, entry-level employment in occupations requiring other than a baccalaureate or higher degree. The instruction may include:

1. hands-on skills training in a laboratory or on the job;
2. classroom instruction necessary to support skills training;
3. programs that provide occupational work experiences including job shadowing, internships, apprenticeships and their related instructional aspects.
4. remedial programs designed to correct education deficiencies or disabilities that prevent students from successfully completing their training;
5. activities of applied technology student leadership organizations that are an integral part of the applied technology instruction; and
6. Custom Fit training which may or may not have CIP codes.

C. "Applied technology center or ATC" means a facility approved by the Board and the Legislature to offer applied technology instruction and related services to secondary and non-degree seeking adult students.

D. "Applied technology center service region or ATCSR" means an entity provided facilities by school districts and/or higher education institution(s) recognized by the Board and the Legislature and coordinated with the State Board of Regents through the Joint Liaison Committee to offer applied technology instruction and related services to secondary and non-degree seeking adult students.

E. "ATC/ATCSR board" means applied technology center or applied technology center service region board.

F. "ATC/ATCSR executive officer" means applied technology center superintendent or applied technology center service region director.

G. "ATC/ATCSR region" means a group of school districts and higher education institution(s) assigned by the Board and the State Board of Regents through the Joint Liaison Committee to an applied technology center or applied technology center service region.

H. "Board" means the Utah State Board of Education/Utah State Board for Applied Technology Education.

I. "Independent auditor" means an auditor selected by each ATC/ATCSR or the ATCSR fiscal agent as selected through the State Auditor's Office bid procedures.

J. "Joint Liaison Committee" means a committee comprised of members of the Board and the state superintendent, members of the Utah State Board of Regents and the commissioner, and business and industry members, co-designated in Section 53A-1.501.

K. "Occupational upgrade" means additional job training for a currently employed individual.

L. "Open entry/open exit" means enrolling students, providing testing and assessment services, conducting applied technology instruction, and offering support services on the basis of individual rates and needs at any time during the calendar year instead of pre-set dates such as the traditional school semester or quarter.

M. "Regions" means the nine groupings of school districts, applied technology centers or service regions, and higher education institutions as defined by the Board and the Utah State Board of Regents through the Joint Liaison Committee.

N. "Region master planning committee" means the group of individuals designated by the state applied technology master plan to develop an annual regional applied technology master plan which includes the regional operation of applied technology programs by school districts, applied technology centers or service regions, and higher education institutions. One member shall be designated by the committee as the regional chairperson.

O. "SEOP" means student education occupation plan which is cooperatively developed by the student, the student's parent(s)/guardian(s), and designated school personnel. The plan is guided by general Board requirements and individual student interests and goals.

P. "State applied technology education master plan" means the annually updated resource manual approved by the Board and the Utah State Board of Regents through the Joint Liaison Committee for the planning and operation of applied technology education courses, programs, and facilities on both state and regional levels.

Q. "State Custom Fit Training Program" means a state-funded training program designed to meet the needs of business and industry through classroom, lab, and, if appropriate, on-the-job training. Its purpose is to bring education and business together to provide training and assistance to company employees through applied technology centers and post-secondary institutions in order to stimulate economic development, facilitate the creation of new jobs, coordinate with public schools, and provide businesses with trained workers.

R. "Support services" means a full range of services provided by an ATC/ATCSR designed to assist students in receiving the most benefit from their applied technology instruction.

S. "LISOE" means the Utah State Office of Education/Applied Technology Education Services Division.

R277.904-2. Authority and Purpose.

A. This rule is authorized by the Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-203 which places applied technology centers under the control and management of the Board, Section 53A-1.501 which requires a Joint Liaison Committee which coordinates applied technology education issues between the Board and the Utah State Board of Regents, and Section 53A-1.401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for operating applied technology centers and service regions.
   A. An ATC/ATCSR provides personalized, open-entry/open-exit, competency based, non-credit applied technology center instruction and support services to high school and adult applied technology center students, displaced workers, and unemployed individuals for employment in skill intensive occupations.
   B. An ATC/ATCSR provides occupational upgrade instruction through approved Custom Fit or regular applied technology programs to employed individuals.
   C. An ATC/ATCSR offers personalized open-entry/open-exit, competency based, applied technology instruction on a year round basis (subject to sufficient enrollment and funding) not tied to pre-set dates such as the traditional school semester or quarter.
   D. An ATC/ATCSR shall feature short term, intensive, task specific, instruction closely aligned with the needs of business and industry, with competencies and length of training determined following consultation with ATC/ATCSR program advisory committees.

   A. The Board shall:
      (1) develop a statewide system of applied technology including centers (ATCs) with state supported facilities and service regions (ATCSRs) in regions where facilities are provided by school districts or higher educational institutions or both;
      (2) adopt policies and procedures for the management of applied technology centers;
      (3) appoint ATC boards for the day-to-day operation of applied technology instruction in the ATCs;
      (4) determine statewide ATC needs and submit annual recommendations and funding requests to the Legislature;
      (5) in consultation with each ATC board, appoint and fix the salary, vehicle allowance and all other forms of compensation of an executive officer (the ATC superintendent) for each ATC who will serve at the pleasure of the Board and the applied technology center board;
      (6) coordinate with the Utah State Board of Regents through the Joint Liaison Committee to plan and operate ATCSRs in regions without ATCs;
      (a) adopt policies and procedures for the management of applied technology centers service regions;
      (b) appoint ATCSR boards for the day-to-day operation of applied technology instruction in the service regions;
      (c) determine statewide ATCSR needs and submit annual recommendations and funding requests to the Legislature; and
      (d) in consultation with each ATCSR board, appoint and fix the salary of an executive officer (the ATCSR director) for each ATCSR who will serve at the pleasure of the Board and the Board of Regents and the applied technology center service region board.
   B. The ATC/ATCSR boards shall:
      (1) participate with other applied technology education providers within the region (including school districts and higher education institutions) to develop an annual regional master plan for delivering applied technology center programs and services for approval by the Board and the State Board of Regents through the Joint Liaison Committee;
      (2) function according to rules and procedures set by the Board;
      (3) function according to rules and procedures set by the State Board of Regents as coordinated through the Joint Liaison Committee.
   C. ATC/ATCSR Board Composition
      (1) ATC boards shall:
         (a) establish two year terms for board members with a reappointment schedule designed to maintain continuity of the ATC board;
         (b) recommend potential ATC board members to the Board;
         (c) include:
            (i) at least one member of the local board of education from each school district located within the ATC region;
            (ii) and may include a representative of each higher education institution within the region; and
            (iii) representation by at least two individuals who are employers or represent business and industry located within the ATC region;
      (2) ATCSR boards shall:
         (a) establish two year terms for board members with a reappointment schedule designed to maintain continuity of the ATCSR board;
         (b) recommend potential ATCSR board members to the Board;
         (c) include:
            (i) the superintendent or his designee of each school district in the region;
            (ii) the president or his designee of each higher education institution located in the region; and
            (iii) at least two individuals who are employers or represent business and industry located within the region. ATCSR board members who are elected school board members, trustees, or designees and also are employers or business and industry representatives may be counted as satisfying this requirement;
            (d) also be recommended to the State Board of Regents through the Joint Liaison Committee;
      (3) at least annually, provide recommendations to the Board regarding performance and subsequent salary adjustments for the ATC executive officer according to criteria developed by the Board;
      (4) annually elect a chairperson and vice chair from the board's membership.
      (5) at least annually, provide recommendations to the Board regarding performance and subsequent salary adjustments for the ATCSR executive officer according to criteria developed by the Board;
      (6) annually elect a chairperson and vice chair from the board's membership.
   D. The ATC superintendent or ATCSR director shall:
      (1) serve as the executive officer of the ATC/ATCSR board;
      (2) administer the day-to-day operation of the applied technology center or service region under the policies and rules of the ATC/ATCSR board and the Board; and
      (3) be accountable to the ATC/ATCSR board and the Board in meeting established goals.
      (4) shall, in the case of the ATCSR director, also be accountable to the State Board of Regents through the Joint Liaison Committee.
   E. Unless reserved by the Board, the ATC/ATCSR board shall:
(1) be the immediate, local authority for each applied technology center or service region;
(2) develop policies for the operation of the ATC/ATCSR;
(3) appoint and fix the salary of all employees, except the executive officer;
(4) adopt and administer an annual budget and fund balances;
(5) submit an annual appropriations request to the Board through the Joint Liaison Committee;
(6) in the case of ATCSRs, also submit an annual appropriations request to the Utah State Board of Regents through the Joint Liaison Committee;
(7) conduct annual program evaluations;
(8) appoint program advisory committees and other advisory groups to provide counsel, support, and recommendations for updating and improving the effectiveness of training programs and services;
(9) enact bylaws for self-government, including provisions for board organization and a schedule of regular meetings; and
(10) approve regulations, both regular and emergency, to be issued and executed by the executive officer.

(b) facility, students, employee organizations, rules and regulations;

(c) necessary and proper exercise of authority not specifically denied the ATC/ATCSR by law or by rules of the Board or the Board of Regents.

R277-904-5. Program Advisory Committees.
A. Each ATC/ATCSR shall appoint program advisory committees to provide employer counsel, support, and recommendations for updating and improving the effectiveness of training programs and services.
B. Program advisory committees shall be organized and approved by the ATC/ATCSR board to advise and support each occupational training program at the ATC/ATCSR.

(1) Members of a program advisory committee shall be workers presently employed in the occupation for which the program trains students.
(2) The lead instructor in each training program shall serve as the executive secretary to the program advisory committee.
(3) The program advisory committee shall carry out the program of goals and objectives assigned by the ATC/ATCSR board, provide support, and make recommendations for improving program quality.

R277-904-6. ATC/ATCSR Service Outside of Designated Region.
A. An ATC/ATCSR may freely market and provide services outside its designated region as approved by the Board and coordinated with the State Board of Regents through the Joint Liaison Committee.
B. An ATC/ATCSR may provide services outside its designated region if the services meet the following requirements:

(1) Training has been recommended by the region applied technology master planning committee in which the training is to be provided, and;
(2) The training is not currently or sufficiently offered in the region where it is proposed to be provided; or.

(3) The training is requested and fully funded by the requesting agency or business, or;

(4) The training is provided as a result of a bid consistent with state purchasing procedures.

C. In all cases in which an ATC/ATCSR provides services outside of its designated region, written approval shall be made by the ATC/ATCSR board providing the service and the ATC/ATCSR board of the region where the service will be provided, prior to the commencement of services.

A. Applied technology instruction and support services in each ATC/ATCSR shall incorporate the following components and characteristics:

(1) open entry/open exit enrollment; student assessment, information options, instruction and support services;
(2) hands-on, personalized training based on specific job, skills, and tasks associated with an occupation;
(3) curriculum designed to prepare students for employment;
(4) short term intensive training;
(5) training in meeting employer expectations related to job seeking, job keeping, and appropriate attitudes;
(6) competency-based measurement of student achievement;
(7) instruction based on performance objectives;
(8) traditional letter grade only, when necessary, due to licensure or other documented and specific requirements; and
(9) no credit issued by ATC’s/ATCSRs, however, high school and/or higher education institution credit for ATC/ATCSR earned competencies may be awarded by high schools, colleges, or universities based on written mutual agreement.

B. An ATC/ATCSR Board shall obtain final approval from the Board prior to starting a program that requires permanent space and continuing budget support. The program shall be in the approved regional master plan or shall have completed the program approval procedure and emphasize the following information:

(1) labor market analysis or client request;
(2) program advisory committee recommendations;
(3) other relevant information.

C. A Program report on low student enrollment or job placement statistics or both shall be reviewed by the ATC superintendent/ATCSR director and the ATC/ATCSR board to determine if the program is meeting appropriate job demands.

(1) If not, and other criteria used to evaluate the program warrants action, the program shall be discontinued.

(2) Reasonable notice for phasing out a designated program shall be given to avoid hardship to students and staff.

D. An ATC/ATCSR shall provide student assessment services to determine a potential student’s employability, abilities, needs, interest, and to identify resources available to the student.

(1) Testing, work samples, career guidance, counseling, or any combination may be utilized;

(2) Assessment services shall include the development of a student education occupation plan.

E. An ATC/ATCSR shall conduct student evaluation according to placement and evaluation procedures set by the Board through the Joint Liaison Committee to determine the employment success and capabilities of students after training.

F. An ATC/ATCSR shall provide job placement services for its secondary and post-secondary students. Job placement services may include:
— (1) provision of information on employment opportunities;
— (2) locating job openings;
— (3) providing interview opportunities with prospective employers;
— (4) obtaining the highest feasible level of wage and salary; and
— (5) providing employment market data.

G. An ATC/ATCSR shall cooperate with employers to train workers who can fulfill their needs based on available resources.

H. An ATC/ATCSR may operate enterprize activities and vocational programs as long as the activities/programs are consistent with its mission. Fees shall be equal to the full cost of the program and services.


A. Each ATC/ATCSR board shall direct the executive officers of the program, services, facilities, and staff of the ATC/ATCSR operation and management. Program evaluation data shall include program enrollment, completions, job placements, certifications, wage rates, and program costs factors.

B. The Board, in cooperation with the ATC/ATCSR board, shall evaluate each ATC superintendent/ATCSR director annually.

C. ATCSR boards shall also coordinate with the State Board of Regents through the Joint Liaison Committee for this function.

D. An ATC/ATCSR shall be accredited by the Board in accordance with R277-904.8. Standards and Procedures for Post-Secondary Applied Technology Education Accreditation, as those standards apply to ATC/ATCSRs.


A. An ATC/ATCSR may issue the following certificates:

(1) Certificates of completion awarded on the completion of all required competencies in a training program. The certificate shall indicate the competencies acquired by the student and be issued in a manner that assists students in obtaining employment or further education opportunities.

(2) Certificates of proficiency or skills certificates awarded to students who complete portions of programs identified as independent areas of benchmarks of skill development. The certificate shall indicate to a potential employer the proficiency levels at which the student can perform specific tasks.

B. If a student desires to receive credit for specific program competencies:

(1) secondary credit may be provided through a school district at the district's discretion.

(2) post secondary credit shall be provided through a college or university in accordance with the rules and policies adopted by the Board and the State Board of Regents as coordinated through the Joint Liaison Committee.

C. An ATC/ATCSR may not issue secondary diplomas, degrees, or post secondary credit.

R277-904-10. Staff.

A. Instructional and counseling staff shall hold current certificates consistent with Board rules for the positions to which persons are assigned.

B. Trade and industry, eminence, and alternative certification, as outlined in Board rules, is authorized to meet unique training needs of ATC/ATCSRs.

R277-904-11. Student Eligibility; Fees and Tuition; Student Education Occupation Plan.

A. To be eligible to become a student at an ATC/ATCSR, a person shall comply with ATC/ATCSR rules, including the written code of conduct adopted by each ATC/ATCSR board, be capable of succeeding in an applied technology center training program conducted at the ATC/ATCSR, and be employable at training completion. In addition:

(1) an ATC/ATCSR may not accept a high school student without the approval of the student's school district unless the education and training is in addition to a full school schedule and is outside the regular school day.

High school students enrolling at an ATC/ATCSR shall have an applied technology goal recorded in the student education occupation plan, and be accepted into an ATC/ATCSR program with available space.

(2) an adult student shall have an applied technology goal recorded in the student education occupation plan and shall pay the required tuition and fees.

B. Persons who meet the eligibility requirements, but who are not Utah residents, may be admitted to ATC/ATCSR programs on a space available basis in compliance with R277-902.3.

C. Tuition at ATC/ATCSRs shall be waived for students who are enrolled in Utah high schools or who are of high school age and are working toward a high school diploma, unless classes are taken in addition to a student's full high school schedule.


A. An ATC/ATCSR board shall keep fiscal, program, and accounting records as required by the Board and as needed by the ATC/ATCSR, and shall submit reports required by the Board. The ATC/ATCSRs shall account and report following the model used for Generally Accepted Accounting Principles (GAAP) as set forth by the Governmental Accounting Standards Board (GASB) and the National Association of College and University Business Officers (NACUBO).

B. An ATC/ATCSR shall prepare a comprehensive annual financial report which is issued separately from the financial report of any other entity. An ATC/ATCSR board and the State Auditor's Office shall jointly select an independent auditor to conduct an annual audit of the ATC/ATCSR's comprehensive annual financial report. Three financial statements are required for ATC/ATCSRs. These are the:

(1) balance sheet;

(2) statement of changes in fund balances; and

(3) statement of current funds, revenues, expenditures, and other changes. The independent auditor shall provide an auditors' report and any other reports or documentation required by Government Auditing Standards and by the State Auditor's Office, to the Board within three months after the close of the fiscal year.

C. An ATCSR that is provided financial accounting services through a fiscal agent shall comply with the same annual audit requirements of Subsection R277-904.12 through the independent auditor contracted by the fiscal agent and approved by the State Auditor's Office with the exceptions that:

(1) the ATCSR may prepare separately issued basic financial statements, including notes to the financial statements, rather than a comprehensive annual financial report; and

(2) the auditor may perform a financial review of the separately issued financial statements, rather than a full audit, provided that the ATCSR is included in the audit of the fiscal agent.

D. ATC/ATCSRs shall account for and report their financial
activities to the Board as of June 30 annually as part of the audited comprehensive annual financial report in accordance with GAAP as set forth in GASB pronouncements and in the NACUBO Financial Accounting and Report Manual for Higher Education which are available from the USOE Finance and Statistics Section.

E. Fund Accounting Standards:

(1) An ATC/ATCSR shall establish accounting fund designations as necessary in order to perform financial accounting and reporting in conformity with GAAP as set forth by GASB and NACUBO.

(2) ATC/ATCSRs shall account for current operations within the current accounting funds, comprised of the general operating, designated, auxiliary enterprises, and restricted accounting funds.

(a) The general operating fund shall be used to account for all financial resources and transactions not accounted for in another fund. An ATC/ATCSR APPROPRIATED BUDGET shall be its entire general operating fund budget.

(b) The designated fund shall be used to account for all financial resources and transactions which have internal designations imposed by the local ATC/ATCSR board for a specific operating purpose. Internal designations do not create restricted funds, because removal of the designation remains at the discretion of the ATC/ATCSR board. Included in the designated fund are sales and services of educational activities.

(c) The auxiliary enterprises fund shall be used to account for all financial resources and transactions from activities which predominantly provide goods or services to students, faculty, or staff and that charge a fee directly related, to although not necessarily equal to, the cost of the goods or services. Auxiliary enterprise fund activities are limited to those activities for which sales and services, rather than training and instruction, are the primary purpose. Included in the auxiliary enterprises fund are the following activities unless such activities exist primarily for training or instruction: bookstores, student housing, day care, food services, and exercise facilities.

(d) The restricted fund shall be used to account for all financial resources and transactions which have restrictions placed on their use by external agencies or donors. Included in the restricted fund are the following activities: federal and state student financial assistance programs, federal contracts, federal guaranteed dollar contracts, state contracts (including State Custom Fit Training), local agency contracts, private contracts (including Private Custom Fit Contracts), and independent operations.

(2) Each ATC/ATCSR shall maintain adequate fund balances.

(a) The Board directs that the general operating fund balance should be at least three to five percent of the annual general operating fund revenues.

(b) Unrestricted Current Accounting Funds, Fund Balance--At each ATC/ATCSR, fund balances not externally restricted and not internally reserved for inventories, investment in general fixed assets, or purchase order encumbrances, in all current and plant accounting funds, shall not exceed, combined and at year end, seven and one-half (7.5%) percent of the total combined unrestricted revenues in those accounting funds for the year then ended. The ATC/ATCSR board may recommend an amount greater than that to the Board for approval up to ten (10%) percent of the total combined unrestricted revenues. Exceptional revenue items received late in the fiscal year due to circumstances not in the control of the ATC/ATCSR or due to mandate from a governing authority at Board level or higher to spend such revenue items in a subsequent fiscal year, shall be excluded from fund balances when calculating fund balance percentages for these purposes.

(4) An ATC/ATCSR board may authorize transfers of financial resources among accounting funds. The ATC/ATCSR board may elect to set aside financial resources for specific future operating purposes by transferring financial resources to other accounting funds, such as to designated funds for use in some specific future operating purpose, to plant funds for expansion or rehabilitation or for debt retirement. The ATC/ATCSR board may also elect to return any balances of designated or plant funds to the unrestricted general operating fund.

(5) An ATC/ATCSR shall not incur significant debt without Board permission.

(6) An ATC/ATCSR shall report "Education and General" expenditures in the following functional categories: instruction, academic support, student services, institutional support, operation and maintenance of plant, and scholarships.

(a) The instruction category includes expenditures for all activities that are part of an ATC/ATCSR's instruction or training programs. This category excludes expenditures for instructional personnel when the primary assignment is administration and no direct classroom or lab instruction is included in the assignment.

(b) The academic support category includes expenditures incurred to provide support services for the ATC/ATCSR's instruction or training programs. It includes instructional administration and separately budgeted support for course and curriculum development. Expenditures associated with the office of the chief training officer or manager are not included in this category, but shall be classified as institutional support.

(c) The student services category includes expenditures incurred for the offices of admissions, student records, and other activities with the primary purpose of contributing to student's emotional and physical well-being. It includes counseling, placement, and student financial assistance administration.

(d) The institutional support category includes expenditures for executive level activities concerned with the management of the ATC/ATCSR. This category includes expenditures for the local ATC/ATCSR board, the office of the ATC/ATCSR director, the office of the chief training officer or manager, the office of the ATC/ATCSR business administrator, fiscal operations, employee personnel and records, and public relations.

(e) The operations and maintenance of plant category includes all expenditures of current operating funds for the operation and maintenance of the physical plant.

(f) The scholarships category includes expenditures for scholarships, including those in the form of grants, stipends, and student tuition waivers.

(7) Expenditures from all fund accounts shall be made only by approval of the ATC/ATCSR board and shall be reported to the Board as prescribed by the Board.

(8) Each ATC/ATCSR board shall establish and maintain a capital equipment inventory system consistent with capital equipment inventory standards required by the Board.

(9) An ATC/ATCSR is considered a state agency for insurance purposes. As such, the ATC/ATCSR board shall ensure that the ATC/ATCSR complies with the policies and rules of the State Risk Management Office in insurance matters.

(10) When computing full time equivalent personnel, ATC/ATCSR boards shall use 2,080 hours per year to equal one full time equivalent for all ATC/ATCSR personnel with paid holidays.
and vacation or 1,840 hours for personnel without paid vacation or holidays.

   (11) Supplemental budget reports for unappropriated programs and for the plant accounting funds shall be submitted as part of the appropriation request to provide analysis of a comprehensive ATC/ATCSR budget picture. Appropriation requests and supplemental information shall be submitted to the Board and appropriating body in conformance with designated Board procedures and timelines.

   A. An ATC board shall follow procedures governing capital facilities adopted by the Board.
   B. An ATC board shall approve all capital facility requests, including land acquisition, and shall submit the requests to the Board in accordance with Board procedures.
   C. Any use of ATC facilities that restricts, limits, or interferes with the utilization of those facilities for applied technology education purposes is prohibited.

KEY: adult education, applied technology, education

December 2, 2000
Notice of Continuation October 20, 1997
Art X, Sec J
53A-1-293
53A-1-501
53A-1-401(3)

Education, Administration
R277-905
Standards for Granting Academic Credit by Utah System of Higher Education Institutions for Course Work Completed at Applied Technology Centers

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 24258
FILED: 11/15/2001, 17:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being repealed because the control and governance of applied technology centers is no longer under the State Board of Education.

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

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

ANTICIPATED COST OR SAVINGS TO:
   ★ THE STATE BUDGET: At this time, there are no anticipated costs or savings to state budget because the program will continue under the governance of the State Board of Regents.

   ★ LOCAL GOVERNMENTS: Given the information we have, any costs or savings to local government resulting from the changed governance will be under the control of the State Board of Regents.

   ★ OTHER PERSONS: Given the information we have, any costs or savings to other persons resulting from the changed governance will be under the control of the State Board of Regents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Given the information we have, any compliance costs resulting from the changed governance will be under the control of the State Board of Regents.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E. 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

---------------------------

R277. Education, Administration.
R277-905-1. Definitions.
   A. "Board" means the Utah State Board of Education and the Utah State Board for Applied Technology Education.
   B. "ATC" means Applied Technology Center.
   C. "USHE" means Utah System of Higher Education.
   D. "ATC class or program competency" means vocational, specific and vocational-related course work completed at an ATC in which no instructional costs are ordinarily incurred by the USHE institution granting credit.
   E. "USHE class" means college level general education and related course work offered by higher education institutions at an ATC utilizing regular extension or adjunct faculty.
F. "Vocational-specific course work" means ATC programs which are designed specifically for occupational training programs which are either required or offered as electives in those programs.

G. "Vocational-related course work" means programs not designed specifically for an occupational training program but which are provided to support the specific occupational-related skills and knowledge required for success in occupational training programs. Such course work includes business English, shop mathematics, applied trigonometry, business mathematics, applied algebra, and descriptive geometry.

H. "General education" means courses which may be required in a specific occupational training program but which are designed to introduce students to the content and methodology of the major areas of knowledge—the humanities, the fine arts, the natural sciences, and the social sciences—and to help students develop the mental skills that make them more effective learners.

R277.905-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 7 which vests general control and supervision of public education in the Board, Section 53A-15-201 which establishes the State Board of Education as the State Board for Applied Technology Education, Section 53A-15-203 which places control and management of Applied Technology Centers under the Board and Section 53A-1401(3) which allows the Board to adopt rules in accordance with its responsibilities. This rule is also consistent with Section 53B-16-102 granting control over higher education programs to the Utah State Board of Regents.

B. The purpose of this rule is to define when higher education credit is awarded to students who complete course work at an ATC.

R277.905-3. ATC Class Credit.

A. Higher education credit awarded to students completing an ATC class or program competency is based upon compatibility between the ATC and USHE program and demonstrated competencies achieved in the ATC course or program.

B. Applied Technology program competencies that are congruent with existing courses at community colleges or universities shall be awarded college credit.

C. Approval for a credit agreement shall be:

(1) requested by an Applied Technology Center Superintendent;

(2) approved by the higher education institution in an approved written format, and finalized before credit is awarded.

D. USHE Evaluation/Acceptance of Credit

(1) Receiving USHE institutions shall evaluate programs at ATCs for approval.

(2) Students satisfactorily completing approved programs are awarded higher education credit for the program and shall be required to redemonstrate competencies achieved in the ATC program, except in the case of Subsection (3), below.

(3) In cases where there is a time lapse of greater than twelve months between completion of the ATC course work and application for higher education credit, students may be required to redemonstrate competency.

(4) Review of the course content, procedures, examinations, and teaching materials are the responsibility of the appropriate higher education program or department to ensure quality and comparability with courses offered on the respective institutions’ campuses.

E. Higher Education Credit

(1) Students shall apply for higher education credit as soon as possible upon completion of the ATC learning experience.

(2) An application for award of credit shall also constitute an application for admission to the institution.

(3) The credit only becomes part of the student’s record upon admission to the institution of higher education.

(4) Applications for credit shall be processed not later than twelve months after completion of the ATC learning experience.

(5) Applications for credit after the 12-month period may require a re-assessment of a student’s competency in the subject area.

F. Transfer of Credit

(1) Credit for completing ATC basic education courses, such as reading comprehension, written and oral communication, and computing, which are considered to be remedial or developmental, and numbered less than 100, at the USHE institution, may not be awarded by an USHE institution.

(2) Credit may be transferred for ATC classes which are equivalent to USHE institution courses offered above the 100 course number level.

(3) The transferred credit may be treated as elective credit, particularly when corresponding vocational technical programs are not offered at the receiving USHE institution.

(4) Awarding of credit for an ATC class or program competency at one USHE institution shall ensure acceptance of the credit as transfer credit at any other USHE institution.

G. Credit awarded by the college or university shall identify the source of the external learning experience.

H. Application Fees

(1) Unless a contrary arrangement has been jointly agreed upon by an ATC and a USHE institution, students applying for ATC class credit shall not be assessed by the receiving USHE institution any fee to make up the difference between the tuition charged by the ATC and that charged by the USHE institution.

(2) The USHE institution may assess a one-time application/admissions fee, at its current admissions fee rate, at the time of the initial request for credit. The fee shall be used to cover the costs of evaluating transcripts and establishing student records.

R277.905-4. USHE Class Credit.

A. Students applying for credit for a USHE class shall receive full credit at a receiving USHE institution.

B. Partial course credit shall not be given.

C. USHE classes completed on an audit basis may not, at a later date, be transferred for credit.

D. USHE institutions required to offer general education at an ATC shall make every effort to offer the courses at the time of the year and at the time of the school day requested.

E. If a general education course required for a vocational technical education program offered at an ATC cannot be made available by a USHE institution, the ATC may appeal to the State Board of Regents—State Board for Applied Technology—Education Liaison Committee.

R277.905-5. Articulation Agreements.

A. Articulation agreements between ATCs and institutions of higher education shall be in writing.

B. Copies of these agreements shall be provided to the appropriate Regional Vocational Planning Councils, the Associate Superintendent for Public Instruction and the Deputy Commissioner for Higher Education.
Education, Administration
R277-907
ATC/ATCSR Membership Hour Accounting

NOTICE OF PROPOSED RULE

(Rule)
DAR FILE NO.: 24259
FILED: 11/15/2001, 17:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being repealed because the control and governance of applied technology centers is no longer under the State Board of Education.

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

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

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: At this time, there are no anticipated costs or savings to state budget because the program will continue under the governance of the State Board of Regents. Budgets will be controlled by that Board.

LOCAL GOVERNMENTS: Given the information we have, any costs or savings to local government resulting from the changed governance will be under the control of the State Board of Regents.

OTHER PERSONS: Given the information we have, any costs or savings to other persons resulting from the changed governance will be under the control of the State Board of Regents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Given the information we have, any compliance costs resulting from the changed governance will be under the control of the State Board of Regents.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.
[R277-907. ATC/ATCSR Membership Hour Accounting.
R277-907-1. Definitions.

A. "Applied technology center or ATC" means a facility approved by the Board and the Legislature to offer applied technology instruction and related services to secondary and non-degree seeking adult students.

B. "Applied technology center service region or ATCSR" means an entity provided facilities by school districts and/or higher education institution(s), recognized by the Board and the Legislature, and coordinated with the State Board of Regents through the Joint Liaison Committee to offer applied technology instruction and related services to secondary and non degree seeking adult students.

C. "ATC/ATCSR technical training" means subject area or skill training in a defined instructional program authorized by the USOE and the Commissioner of Higher Education using approved Classification of Instructional Program (CIP) codes.

D. "ATC/ATCSR non-technical training" means market driven training skills other than technical courses designed to prepare students for entry-level employment requirements in a highly technical market. Courses may include:

(1) applied communications;
(2) blueprint reading;
(3) computer literacy;
(4) principles of technology;
(5) applied chemistry;
(6) first aid and emergency medical skills training; or
(7) other industry based requirements approved by the USOE and Commissioner of Higher Education.

E. "Board" means the Utah State Board of Education/Utah State Board for Applied Technology Education.

F. "Membership" means the number of students on the current roll of a class or school as of a given date. A student is a member of a class or school from the date of enrollment at the school and is placed on the current roll until official withdrawal from the class or school because of completion, dismissal, death, transfer, or
administrative withdrawal. The date of withdrawal is the date on which it is officially known that the student has left school for one of the above reasons and is not necessarily the first day after the date of last attendance.

G. "Membership hour" means fifty minutes of actual training time provided by an ATC/ATCSR instructor/employee and charged at a tuition rate in accordance with R277.907-4.

H. "State Custom Fit Training Program" means a state-funded training program designed to meet the needs of business and industry through classroom, lab, and/or appropriate on-the-job training. Its purpose is to bring education and business together to provide training and assistance to company employees through ATCs/ATCSRs and post-secondary institutions in order to stimulate economic development, facilitate the creation of new jobs, coordinate with public schools, and provide businesses with trained workers.

I. "Employer and community services training" means a broad function of employer required or community courses which incorporate both State and private custom fit training, and short term intensive training.

J. "Short-term intensive training (STIT) programs" means customized, short-term training courses funded by higher education to support business and industry through training.

K. "Employer-based training" means an extension of the classroom training and a continuation of the curriculum and competency development at the work site.

L. "Essential workplace remediation" means basic mathematics instruction that includes addition, subtraction, multiplication, division, fractions, decimals and percentages offered to students of specific skill levels, basic reading skills instruction usually taught to students whose reading test scores fall below the eighth grade level, and other basic skills training needed to prepare a student for full participation in a technical training program.

M. "English as a second language (ESL)" means programs designed to bring the English proficiency of individuals to a level required to function in society and to meet skill level requirements for training and employment.

N. "Pro-enrollment services" means testing or evaluation services offered to students who apply for or are referred to an ATC/ATCSR for services.

O. "Career guidance/financial aid guidance" means a counseling program designed to assist students in identifying career strengths and goals.

P. "VSR/4 format" means the common ATC/ATCSR student scheduling database through which all reports of data to USOE are generated.

Q. "CIP Code" means Classification of Instructional Program which are codes designated by the USOE for approved applied technology education courses and programs.

R277.907-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-15-202(2) which allows the Board to distribute funds received by the Board to aid applied technology education, and Section 53A-1401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to define membership hours for the purpose of allocating funds and documenting and tracking instructional time consistently for ATC/ATCSR students and to establish procedures for allocating, documenting and tracking membership hours.

R277.907-3. Membership Hour Recording and Reporting.

A. Membership hours shall be recorded and reported through the VSR/4 common student information and scheduling system. Common data reported to the USOE shall be generated through the VSR/4 software utility, called "Preparing State Enrollment Data".

B. ATC/ATCSRs shall record and report actual training time. Hours shall be factored by the USOE so that fifty minutes of training time for one student equals one membership hour.

C. ATC/ATCSR student schedules shall accurately reflect only instructional time and shall not include non-instructional time.

D. Student schedules and instructional time shall be supported by attendance rolls. Attendance rolls may be electronic in the VSR/4 format, or written, hard copy rolls. Rolls shall show student attendance and include other information required by the USOE, such as course title, instructor, period held.

E. ATC/ATCSRs shall record and report data consistent with all common data elements provided by the USOE/ATE Division.

R277.907-4. Tuition Charges for Membership Hours.

A. Tuition shall not be charged to secondary students.

B. Tuition may be charged to adult students.

C. Tuition fee schedules for adult students shall not exceed eighty-five cents per membership hour except under the following conditions:
   (1) Tuition fee schedules for part-time adult students may be set on a sliding scale which increases with fewer hours, but fees shall be proportional to eighty-five cents per membership hour for a full-time adult student;
   (2) A flat tuition rate may be charged for classes, but shall be based on a charge not to exceed eighty-five cents per hour for the hours the class is scheduled;
   (3) The Board may provide exceptions for special circumstances, such as programs or courses leading to state licensure or certification.


A. Technical training programs operated at ATC/ATCSRs under authorization of the USOE and the Commissioner of Higher Education and using approved CIP codes shall be recorded and reported as membership hours and shall count for funding distribution within the ATC/ATCSR system.


A. Students may take and the institution may generate membership hours for training related to students' technical training.

B. Related training may be offered in the student's technical program or in separate courses.

C. Related courses shall be approved by employer advisory committees and come under approved CIP codes or the ATC/ATCSR may apply for a new code.

D. These courses shall be tracked and recorded in a student's technical program.

R277.907-7. Employer and Community Services Training Programs.

A. Employer and community services training shall generate membership hours if the following criteria are met:
(1) Student is enrolled in a regular ATC/ATCSR program, under approved CIP code, delivered at an ATC/ATCSR classroom or lab facility.

(2) Training uses a portion or all of the regular specialty ATC/ATCSR program curriculum without customization or substantial alteration; and

(3) Training is provided by an approved or adjunct ATC/ATCSR instructor whose salary is paid using authorized ATC/ATCSR funding sources.

B. Tuition shall be paid to the ATC/ATCSR by Employer and Community Services at the standard tuition rate.


A. All employer-based training shall take place under the general supervision and guidance of a faculty member or designee of the ATC/ATCSR.

B. Employer-based training may be counted in the technical training membership hour count of the program in which the student is enrolled if:

(1) an ATC/ATCSR student is enrolled in a technical training program and assigned to a work site by an ATC/ATCSR faculty member under an approved curriculum;

(2) an approved curriculum has a minimum of 80 percent training activities in classrooms or labs and employer-based training does not exceed 20 percent of total curriculum hours;

(3) the institution bears some of the instructional costs, supports the student on the job, and documents the student's attendance and performance on the job; and

(4) employer-based training for all students is limited to 3.5 percent of the total institutional membership hours.


A. Basic mathematics:

(1) includes addition, subtraction, multiplication, division, fractions, decimals, and percentages;

(2) directed at two populations:

(a) those students requiring review and limited instruction; and

(b) those students who have mastered basic math concepts as evidenced or evaluated by the student's inability to perform the basic math competencies which are part of the technical training requirements.

B. Basic reading skills instruction:

(1) directed at those students whose reading test scores fall below the eighth grade level;

(2) uses a reading program applicable to the technical program in which the student is enrolled.

C. Essential Workplace Remediation may also include basic communications and other basic skills training needed to prepare a student for full participation in a technical training program.

D. Essential workplace skills remediation hours shall be counted separately from other ATC/ATCSR membership hours and reported under the essential workplace skills category.

E. A limit of 6.5 percent of the total of reported membership hours may be in assessment, assessment interpretation, and essential workplace skills remediation.


A. Each ATC/ATCSR shall document all students receiving testing services.

B. Documentation of student time for testing:

(1) shall be consistent among ATC/ATCSRs;

(2) shall be recorded in the VSR/1 format;

(3) shall be available for audit by the USOE.

C. Time recorded for testing:

(1) Testing time periods shall be test publishers' standard testing time when available.

(2) If a publisher's test time does not exist, each ATC/ATCSR shall formally document the actual test time of a reasonable sample of students and develop testing time standards.

(3) When large numbers of tests are used, a sample of at least twenty-five students shall be required.

D. Standards developed by the ATC/ATCSR shall be documented in an audit file for annual audits and reviewed every three years by members of an administrative team designated by the ATC/ATCSR executive officer.

E. Time recorded for testing interpretation shall be actual time used by testing or career guidance personnel for test interpretation and guidance with the customer.

F. Pre-enrollment services hours shall count under and be part of the 6.5 percent limitation identified in Subsection R277-907-8.


A. English as a second language (ESL) classes are not typically offered by ATC/ATCSRs.

B. If an ATC/ATCSR chooses to develop and fund an ESL program consistent with the institutional mission, ESL student membership hours may be counted, under the ESL category.

C. In order for ESL hours to be counted as membership hours, the student shall also be enrolled in technical training.

D. ESL hours shall count under and be part of the 6.5 percent remedial workplace skills hour limitation identified in Subsection R277-907-8.


A. Membership hours for students in counseling, sessions or activities or both need not be documented and shall not be counted for purposes of any ATC/ATCSR funding.

R277-907-13. Transporting High School Students to and from ATC/ATCSR Classes and Programs.

A. Providing services to high school students necessitates that students may need to travel to ATC/ATCSR sites during regularly scheduled periods.

B. Travel time spent by students between their resident high schools and ATC/ATCSR sites shall not be counted as membership hours.


A. Membership at an institution shall end, as shall the accumulation of membership hours, if a student misses ten unexcused, as defined by the institution, consecutive days.

B. The ten-day termination policy may affect no more than 10 days when the absence period crosses two consecutive fiscal years.

C. Notwithstanding the ten-day rule, membership hours shall not be extended past the official withdrawal date or the program/course ending date.
Education, Administration

R277-912

Standards and Procedures for Post-Secondary Applied Technology Education Accreditation

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 24260
FILED: 11/15/2001, 17:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being repealed because the control and governance of applied technology centers is no longer under the State Board of Education.

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

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

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: At this time, there are no anticipated costs or savings to state budget because the program will continue under the governance of the State Board of Regents. Budgets will be controlled by that Board.

LOCAL GOVERNMENTS: Given the information we have, any costs or savings to local government resulting from the changed governance will be under the control of the State Board of Regents.

OTHER PERSONS: Given the information we have, any costs or savings to other persons resulting from the changed governance will be under the control of the State Board of Regents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Given the information we have, any compliance costs resulting from the changed governance will be under the control of the State Board of Regents.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7788, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.
[R277-912. Standards and Procedures for Post-Secondary Applied Technology Education Accreditation.]
R277-912-1. Definitions.

"Board" means the Utah State Board for Applied Technology Education.


A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board. Section 53A 15-202 which directs the Board to establish minimum standards for applied technology programs and Section 53A 1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the standards and procedures by which applied technology programs may become accredited by the Board; and

(2) establish an accreditation program of appropriate and high standards of attainment.


The Board shall act in accordance with "Standards and Procedures for Post-Secondary Applied Technology Education Accreditation," Utah State Board for Applied Technology Education, 1998. This document is available upon request from the Utah State Office of Education Applied Technology Education staff and in the five applied technology centers.

KEY: accreditation, applied technology education
RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being repealed because the control and governance of applied technology centers is no longer under the State Board of Education.

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

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

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: At this time, there are no anticipated costs or savings to state budget because the program will continue under the governance of the State Board of Regents. Budgets will be controlled by that Board.
- LOCAL GOVERNMENTS: Given the information we have, any costs or savings to local government resulting from the changed governance will be under the control of the State Board of Regents.
- OTHER PERSONS: Given the information we have, any costs or savings to other persons resulting from the changed governance will be under the control of the State Board of Regents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Given the information we have, any compliance costs resulting from the changed governance will be under the control of the State Board of Regents.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.
R277-913. Utah’s State Custom Fit Training Program.
R277-913-1. Definitions.

A. “Board” means the Utah State Board for Applied Technology Education.
B. “USOE” means the Utah State Office of Education.
C. “State Custom Fit Training Program” means a state-funded training program designed to meet the needs of business and industry through classroom, lab, and, if appropriate, on-the-job training. Its purpose is to bring education and business together to provide training and assistance to company, employees through applied technology centers/applied technology center service regions and post-secondary institutions in order to stimulate economic development, facilitate the creation of new jobs, coordinate with public schools, and provide businesses with trained workers.
D. “State Custom Fit Advisory Committee” means an advisory group, appointed by the Board, consisting of at least one representative from each of the following organizations: USOE, Workforce Services, higher education, State Office of Community and Economic Development, Utah State Office of Rehabilitation, secondary education, applied technology centers/applied technology center service regions, and business and industry from regions where funds are distributed and a business representative agrees to participate.
E. “State Custom Fit funds” means funds appropriated by the Utah Legislature to the Board to train employees for specific new or expanded businesses or businesses needing revitalization. These funds shall be expended through Utah’s public schools, applied technology centers/applied technology service regions, and institutions of higher education providing state Custom Fit Training programs.
F. “Expanding business” means any existing for-profit business currently in Utah whose growth has resulted in a net increase of new full-time (35 hours per week) jobs, as measured against its maximum employment, over a twelve month period.
G. “New business” means:
   (1) a for-profit business that newly incorporates or is licensed in the state of Utah;
   (2) an incorporated or licensed business which has been purchased by other parties and subsequently restructured;
   (3) an incorporated or licensed business that opens an additional facility in another region; or
   (4) an incorporated or licensed business that closes in one region and re-opens in another region.
Any of the above activities qualifying a business as “new” shall have happened within twelve months of the business’s request for state Custom Fit funds.
H. “Business Revitalization” means a business in the state of Utah that is in need of upgrade training for its work force because of outdated equipment, technology, or knowledge. The company must
be in jeopardy of losing its competitive edge if it does not upgrade its employees through training. The company shall express in writing the reason it needs Business Revitalization upgrade training.

1. "Classroom Lab Training" means an emphasis on learning and competencies through lectures, videos, reading, writing, and other non-production oriented activities. Lab training is a simulated work experience that yields no revenue for the company. Classroom lab training can be accomplished at the institution or on company site.

2. "On-the-Job Training (OJT)" means a set of structured, supervised training experiences which occur in the regular work environment and which result in technical or judgment skills necessary to produce a service or product that yields revenue.

K. "Reporting" means procedures used for counting student enrollments and outcomes in accordance with guidelines adopted by the Board.

L. "Private Custom Fit Training" means a contracted program which provides specialized, short-term training which is privately funded and developed for a specific employer or group of employers by a training center.

M. "Placement" means the acceptance of State Custom Fit trainees in a private or state operated program, who, with rare exceptions, are already hired and considered placed at the beginning of the program.

N. "Master Agreement" means a signed agreement between the institution providing the training and the business receiving the training. It will specifically outline the training that will take place and the related costs.

R277-913-2. Authority and Purpose.
A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-15-201 which designates the Board as the State Board for Applied Technology Education, Section 53A-15-202 which directs the Board to establish minimum standards for applied technology education programs and perform duties required by law, and Sections 53A-17a-113 and 53A-17a-114 which direct the Board to set standards and calculations for applied technology education programs.

B. This rule establishes criteria for the distribution and use of State Custom Fit Training funds and establishes the State Custom Fit Advisory Committee.

R277-913-3. State Custom Fit Advisory Committee (the Committee).
A. The Committee shall be appointed by the Board.
B. The Committee shall recommend priorities for disbursement of program funds to the USOE Executive Finance Committee.
C. The Committee shall recommend policies and standards to the Board regarding State Custom Fit Training programs.
D. The Committee shall recommend the procedures that direct the daily operation of the State Custom Fit Training Program.

A. State Custom Fit Training funds may be used for businesses that are new, expanded or need revitalization.
B. The purpose of State Custom Fit Training is to:
    (1) provide short term, job specific training;
    (2) bring education and business together;
    (3) provide curriculum and assistance;
    (4) stimulate economic development;
    (5) facilitate new jobs;
    (6) provide businesses with trained workers;
    (7) provide the opportunity for Private Custom Fit; and
    (8) provide classroom and lab training either at the institution or business facilities.
C. State Custom Fit Training funds may be used for state Custom Fit Training programs and for the reimbursement of training expenses for:
    (1) Assessment (including a 2 to 1 ratio of potential employees);  
    (2) Instruction;
    (3) Books, supplies, materials, and tools; any special items related to training are subject to approval by the USOE Custom Fit Specialist;
    (4) Utilities, if other than on premises of educational center, institution or business;
    (5) Rental/lease of facilities, if other than on premises of educational center, institution or business;
    (6) Curriculum development;
    (7) Supervised OJT; supervisor appointed by business participant;
    (8) Evaluation.
D. State Custom Fit funds shall only be used for short-term customized training.
E. A minimum of 35 hours of permanent full time employment is required for a trainee to be designated as a participant in the State Custom Fit Training Program.
F. A business, institution, or center may be reimbursed for trainees who complete the outlined training program, as stated in the Master Agreement, and are employed by the company receiving training.
G. State Custom Fit Training programs shall be coordinated jointly by the business, institution, and the USOE.
H. The training institution shall have responsibility to keep all state Custom Fit Training Program documentation on file, and report training progress and completion to the USOE.

R277-913-5. Priorities for Funding.
A. In selecting cooperating businesses, the following factors shall be considered:
    (1) Availability of state Custom Fit Training funds;
    (2) Company/industry stability;
    (3) Employee wages;
    (4) Employee benefits;
    (5) Increased or improved potential industrial commercial opportunities;
    (6) Employee turnover and longevity; and
    (7) Prior participation in state Custom Fit programs or acceptance of funding.
B. USOE State Custom Fit Training Program staff shall evaluate training proposals based on their potential to initiate additional new, net jobs, to upgrade employees to assure the business’ competitive position and to enhance economic development in Utah.
C. Priority shall be given to training for production, processing and assembly type jobs.

KEY: secondary education, applied technology education
December 3, 1996
Notice of Continuation April 15, 1997
Health, Health Systems Improvement, Child Care Licensing
R430-50
Residential Certificate Child Care Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24264
FILED: 11/15/2001, 22:00

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule establishes standards to protect the health and safety of children who receive services from a residential certificate child care provider.

SUMMARY OF THE RULE OR CHANGE: In Section R430-50-3: adds definition of "supervision". In Section R430-50-5: clarifies that the CPR/First Aid course is a "completion" not certificate; and requires the owner to complete a minimum of five hours training. In Section R430-50-6: requires the owner or substitute care giver to be physically present on-site to provide care and supervision of children; and permits children, with parent permission, to participate in supervised out-of-home activities. In Section R430-50-7: amends the child discipline standard to be consistent with the standards in Rule R430-100. In Section R430-50-8: adopts by reference Rule R430-6, Background Clearance rule. In Section R430-50-9: requires the owner to report to the Department any fatality, hospitalization, or emergency medical treatment within 24 hours and submit a written injury/incident report within 5 days. In Section R430-50-10: clarifies that indoor and outdoor play spaces, toys, and equipment be maintained in a safe manner to prevent injury to children; and lessens the requirement that all electrical outlets be capped with safety devices by making it applicable only where the outlets are accessible to children under age five. In Section R430-50-12: clarifies that meals or snacks be served to children at least every three hours and infants be fed on demand or according to parent instructions; requires food preparation areas to be clean and sanitary; and requires a current food handler permit. In R430-50-13: enumerates civil money penalties as required by the Rulemaking Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Bureau of Licensing will incur $4,000 in costs to copy and mail the rule change to providers.
❖LOCAL GOVERNMENTS: Inasmuch as local governments do not operate residential child care centers, there is no cost impact on them.
❖OTHER PERSONS: Local health departments already require all food handlers to have a current food handler’s permit. This change simply brings the rule in parallel to the local requirement. The remainder of the changes either lessen the requirements or are clarification that can be accomplished at negligible cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each affected person may experience negligible costs because of this rulemaking.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Recent reductions in the regulatory burden on child care centers are reflected in this rule to bring consistency across all regulated child care providers. It is expected that this will have a positive impact on regulated businesses. Rod L. Beitt

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Rod Beitt, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-50-1. Legal Authority.
This rule is promulgated pursuant to Title 26, Chapter 39.

This rule establishes standards to protect the health and safety of children who receive services from a residential certificate child care provider.

R430-50-3. Definition.
(1) "Residential certificate child care" means child care provided in the home of a provider for five to eight children, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation.
(2) “Supervision” means the function of observing, overseeing, and guiding a child or group of children.


A provider of child care for [four or fewer] less than five children in the providers home may request a residential certificate.

R430-50-5. Owner Qualifications.

1. To be eligible for an initial residential certificate the owner must:
   (a) be at least 18 years of age;
   (b) have a current certification course completion in basic first-aid and Cardiopulmonary Resuscitation (CPR). First-aid and CPR certification refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee may demonstrate to the Department to be equivalent; and
   (c) meet at least one of the following:
      (i) have a high school diploma or G.E.D.
      (ii) be an approved federal food program provider as of July 1, 1998; or
      (iii) if (i) or (ii) cannot reasonably be met by the owner and an undue hardship is created, the owner may request a variance from the Department.

2. The owner shall [submit to the department at the time of initial application documentation that five hours of Department approved training has been completed] complete a minimum of five hours of Department approved training within 90 days of initial certificate issuance. Documentation of training shall be maintained at the home of the owner. Training will be Department-approved if it includes:
   (a) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation;
   (b) proper hand washing and sanitation techniques;
   (c) recognizing early signs of illness and determining if there is a need to exclude a sick child from the home;
   (d) accident prevention and safety principles;
   (e) positive guidance for the management of children;
   (f) child development;
   (g) age appropriate activities for children; and
   (h) If child care is provided to children under the age of two, the training must also include:
      (i) Preventing shaken baby syndrome;
      (ii) Coping with crying babies; and
      (iii) Preventing sudden infant death syndrome.

3. The owner shall ensure that each care giver [or volunteer] who has direct contact with or access to children successfully completes the required five hours of department approved training before starting assigned duties.

R430-50-6. Care Giver to Child Ratios.

1. The owner may not care for more than eight children including the owner's own children under age four. The owner also may not care for more than two children under age two, including the owner's own children under age two.

2. The owner or substitute care giver shall be physically present on-site and provide care and supervision of children at all times, both indoors and outdoors. This includes:
   (a) awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed; and
   (b) frequent in person observations of children sleeping in cribs and play pens.

3. The owner may permit a child to participate in supervised out of home activities without the care giver if:
   (a) the care giver has prior written permission from the child's parent or guardian for the child's participation; and
   (b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision throughout the period of care.

4. The owner may make arrangements for a substitute who is at least 18 years old and who is capable of providing care and supervision of children and handling emergencies in the absence of the care giver.


1. The owner shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

2. Disciplinary measures shall be implemented so as to encourage the child's self-control. Discipline measures shall be explained to the child at the time the discipline is imposed and may include to reduce the risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:
   (a) positive behavioral rewards;
   (b) other forms of positive guidance;
   (c) redirection; or
   (d) time out.

3. Care givers shall not do any of the following:
   (a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;
   (b) restraining a child's movement by binding or tying;
   (c) using abusive, demeaning or profane language;
   (d) withdrawing food or bathroom opportunities; or
   (e) confining a child in a locked closet, room, or similar area; or
   (f) forcing or withdrawing food, rest, or bathroom opportunities.

4. “Time out” that enables the child to regain control and keeps the child in visual contact with the care giver shall be used selectively, taking into account the child's developmental stage and the usefulness of “time out” for the individual child.

5. For children 18 months and older, “tantrums” shall be interrupted every three minutes until control is obtained.


1. The owner shall obtain from the parent or legal guardian an admission agreement, which identifies the following:
   (a) child's full name and nickname;
   (b) parent or guardian's name, address and day time phone number;
   (c) name, address and phone number of at least one additional person to be notified in the event of an emergency if the parent or guardian cannot be located;
   (d) name, address and phone number of the child's primary source of emergency health and dental care;
   (e) description of any food sensitivities, allergies or special food needs; and
   (f) immunization record.
(2) The owner shall obtain, in advance, from the parent or legal guardian the names, addresses and phone numbers of persons authorized to take the child from the residence.

(3) The owner shall maintain documentation that all individuals in the home [over age 18 have been cleared by the Department for criminal convictions or substantiated findings of child abuse] comply with R430-6. Background Clearance.


(1) The owner shall inform the parents or guardians of all injuries and incidents that occur during the child's stay at the home. 
   (a) The owner shall immediately notify the parents or guardians if medical treatment is required.
   (b) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the owner shall:
      (i) notify the Department within 24 hours of occurrence, either by phone or facsimile; and
      (ii) submit to the Department within five business days of occurrence a written injury and accident report.

(2) If an owner chooses to administer medications, then the oral over-the-counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have written instructions for administration.

(a) The parent or guardian shall provide written permission for the administration of all medications.

(b) The owner shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(c) The owner shall ensure that all medications are secured from access to children. If medications are required to be refrigerated, then they shall be stored in spiff-proof packaging.

(d) The owner will return all unused and out-of-date medications to the parent or guardian.

(3) The owner may not admit or provide care to a child without proof of current immunizations, or evidence of conditional enrollment, or evidence of a personal, medical or religious exemption. Conditional enrollment means that the child has received at least one dose of each required vaccine prior to enrollment and be on a schedule for subsequent immunizations.

(4) The owner shall inform parents of communicable illnesses or parasites on the day of discovery.

(5) The owner shall ensure that the use and accessibility to [of tobacco in any form, the use of alcohol, the ingestion of any substance (including prescription medications) in amounts known to compromise responsible judgement, and the use of or possession of] illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are under care.

(b) The owner shall maintain an operating telephone in the home, unless there is a utility failure.

(c) The owner shall post the names and telephone numbers of the emergency medical personnel, fire department, police, and poison control by the telephone.

(2) The owner shall maintain fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits, leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit shall be present leading to an open space at ground level.

(3) Each home shall have an outdoor play space which is safe, free from hazards, located away from traffic or water hazards, and is available on the premises or is easily and safely accessible to the home. If a fence is required to protect children from any traffic or water hazards then the fence shall be at least four feet high. If local ordinances conflict, the owner may request a variance from the Department. Any gaps within the fence and the bottom edges of the fence shall not be more than three and one-half inches above the ground.

(4) If children are diapered at the home, then diapering shall occur in an area separate from food storage, food preparation, and eating area. A smooth nonabsorbent diaper changing surface and a sanitary container for soiled and wet diapers shall be available.

(5) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(6) Equipment and furniture must be durable, in good repair, structurally sound, and stable. Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(7) Dangerous items, such as [sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.]

(8) Electrical outlets accessible to children [four years of age and younger shall be protected or capped with safety devices.]

(9) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(10) There shall be adequate housekeeping to maintain a clean and sanitary home, to control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(11) All care givers who prepare or serve food and snacks must have a food handlers permit.

(12) The owner shall ensure that there are no firearms or other weapons accessible to children during times children are on the premises. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area.

(1) If the owner has pets at the home:

   (a) the animals shall be clean and in good health;
   (b) the animals shall have current vaccination records available for all diseases transmissible to humans;
   (c) the animals shall have no history of dangerous or aggressive behavior;
   (d) the children shall not clean nor assist with the cleaning of animals, animal cages, pens or equipment;
   (e) the animal cages and equipment shall not be cleaned in food preparation or food storage areas; and
   (f) Children shall not be permitted to handle reptiles, including turtles and lizards.]
(14) During all times that children are on the premises, the owner shall ensure that no sexually explicit materials are accessible to children or viewed by any person on the premises.


Only the owner may transport children in non-public vehicles.

Children must be transported in the following manner:

1. The vehicle is licensed, registered and inspected.
2. The vehicle has a current Utah driver’s license.
3. The vehicle and owner are insured.
4. The vehicle is equipped with individual, size appropriate safety restraints.


(1) A meal or snack shall be served to the children at least every three hours.

(2) The food preparation area shall be clean and sanitary.

(3) All care givers who prepare or serve food and snacks must have a current food handlers permit.


The Department may impose civil monetary penalties in accordance with Title 63, Chapters 46b, Administrative Procedures Act and Section 26-39-108, 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 a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
[September 24, 1999] 2002
26-39

________________________

Health, Health Systems Improvement, Child Care Licensing

R430-60
Hourly Child Care Center

NOTICE OF PROPOSED RULE
(Amendment)
DAR File No.: 24265
Filed: 11/15/2001, 22:09

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to establish standards for the operation and maintenance of hourly care child care centers. With the recent rule changes made to Rule R430-100, Child Care Center, standards for Hourly Child Care Center providers require amendments to be consistent.

SUMMARY OF THE RULE OR CHANGE: In Section R430-60-2: amends the purpose and adds exclusion for licensing. In Section R430-60-3: changes the direct supervision definition to address the new term in Rule R430-100. In Section R430-60-6: adds requirement for care givers to be oriented on procedures for releasing children to parents; modifies language to require that the 18-year old supervisor of 16 year olds have completed required in-service training; and amends the terminology to require course completion not certification. In Section R430-60-7: adds requirement to include food sensitivities on the child's admission agreement. In Section R430-60-8: amends the discipline section to match Rule R430-100. In Section R430-60-13: adds requirement for the director to notify the Department of any fatality, hospitalization, or emergency medical treatment required within 24 hours, and submit a written injury and accident report within 5 working days; amends written policies and procedures and eliminates the judgement needed to ensure "responsible judgement"; adds requirement for diaper changing area with railing; and specifies hot water temperature shall not exceed 120 degrees. In Section R430-60-16: adds penalty language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: Cost for copying and distributing the rule may be born within the current budget.
- LOCAL GOVERNMENTS: Local governments should not be affected since they do not operate hourly child care program, Department of Workforce Services contracts for the services.
- OTHER PERSONS: Hourly centers may have an increase of $230, if the 23 facilities do not have a rail on the diaper changing table.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Approximately $10 for each facility that does not have a diaper changing rail.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes bring consistency to the standards imposed on all licensed providers. The minor cost to add a rail on diaper changing tables is justified. Rod L. Betit

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

- HEALTH
- HEALTH SYSTEMS IMPROVEMENT,
- CHILD CARE LICENSING
- CANNON HEALTH BLDG
- 288 N 1460 W
- SALT LAKE CITY UT 84116-3231, or
- at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wyankoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us
INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-60. Hourly Child Care Center.

R430-60-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-60-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of hourly child care centers. It establishes minimum requirements for the health and safety of children in licensed programs. Hourly programs which would permit children to access the entire facility or area if the children are attended by parents, are exempt from the requirement to obtain a license.


"Direct Supervision" means that the care giver [must be able to see and hear the children, and be near enough to intervene when needed] can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

R430-60-4. License Required.

A person must obtain an hourly child care center license if he:

(1) provides child care not in a personal residence;
(2) provides care for five or more children for less than 24 hours a day, but not on a regular schedule; and
(3) receives direct or indirect compensation.

R430-60-5. Administration and Organization.

(1) The licensee of the program shall exercise supervision over the affairs of the program and assure:

(a) compliance with federal, state, and local laws and for the overall organization, management, operation and control of the facility;
(b) establishment and implementation of policies and procedures for the health and safety of children in the center; and
(c) appointment of a qualified director who shall assume full responsibility for the day-to-day operation and management of the facility.

(2) The director of the hourly care program shall have the following qualifications:

(a) be at least 21 years of age;
(b) have knowledge of applicable laws and rules;
(c) except for directors of a program licensed before June 1, 1998, the director must have a high school diploma or GED equivalent; and:
(i) a bachelor's or associate's degree in Early Childhood Education or Child Development;
and
(ii) a bachelor's degree in a related field with documented four courses of higher education completed in child development; or

(iii) a national or state certification such as Certified Childcare Professional, National Administrator Credential, Child Development Associate (CDA); or

(iv) two years experience in child care, elementary education, or a related field.

(3) The director shall ensure that adequate direct supervision is maintained whenever the program is operating. The care giver-to-child ratios established in R430-60-9 are minimum requirements only. The director shall ensure that policies exist to adjust these ratios when the age and number of children require additional care givers to maintain adequate levels of supervision and care.


(1) The director shall ensure that each care giver and volunteer who has direct contact with or access to children are oriented to the licensed program and successfully completes the required orientation training before starting assigned duties. The completion of the orientation must be documented in the individual's personnel record. The orientation training must include:

(a) procedures for maintaining health and safety, and handling emergencies and accidents;
(b) specific job responsibilities;
(c) child discipline procedures of R430-60-8[and]
(d) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation; and
(e) releasing children to authorized individuals.

(2) All care givers employed to meet the minimum care giver to child ratios who provide services shall be at least 18 years of age or have completed high school or a GED. In addition to the required staff ratios, an individual who is 16 years old, if he works under the direct supervision of a competent care giver who has completed the minimum of 10 hours in-service training, may provide childcare services.

(3) There shall be at least one care giver on duty in the center during business hours who has a current [certification] course completion in basic child and infant first-aid and Cardiac Pulmonary Resuscitation (CPR), and training in the Heimlich maneuver for treatment of an obstructed airway. First-aid and CPR [certification] refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee can demonstrate to the Department to be equivalent.

(4) All care givers shall receive a minimum of 10 hours of documented in-service training annually. At least five hours of in-service training shall be in person from a person not affiliated with the license holder. The training shall include the following:

(a) accident prevention and safety principles;
(b) positive guidance for the management of children;
(c) child development; and
(d) age appropriate activities for children.

(5) If childcare is provided to children under the age of two, the following in-service topics are required:

(a) Preventing Shaken Baby Syndrome;
(b) Coping with crying babies; and
(c) Preventing Sudden Infant Death Syndrome.

(6) The licensee shall ensure that all care givers complete in-service training, and a record of the fact is made in the care giver's personnel record. The record must include the date training was completed, the topics covered, and trainer's name and organizational affiliation.

(7) The director shall ensure that all care givers are screened for tuberculosis using the Mantoux tuberculin skin test method.
within two weeks of assuming care giver responsibilities. Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.

(a) All care givers with a skin test that indicate potential exposure to tuberculosis shall receive a medical evaluation for tuberculosis disease.

(b) All care givers who have documentation of previous positive reaction to the Mantoux tuberculin skin test shall present documentation of completion of therapy for tuberculosis infection or evidence of a negative chest radiograph within the past 12 months.

(c) Repeated chest radiographs are not required unless the care giver develops signs and symptoms of tuberculosis disease, as determined by a health care professional.


(1) The licensee shall ensure that the parent or legal guardian completes an admission agreement, which identifies the following:

(a) child's full name and nickname;
(b) parent's name and emergency numbers, if the parent will not be on-site;
(c) attestation statement and health evaluation identifying:
   (i) allergies and food sensitivities; and
   (ii) medical conditions, including a certification that all immunizations are current; and
(d) name of the child's physician.

(2) The facility shall maintain staff records to include:

(a) Background screening records; and
(b) In-service training records.


(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control. Disciplinary measures shall be explained to the child at the time the discipline is imposed and may include] to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) positive behavioral rewards;
(b) other forms of positive guidance;
(c) redirection; or
(d) time out.

(3) [Care givers shall not do any] Discipline measures shall not include any of the following:

(a) [physical] corporal punishment, including hitting, shaking, biting, pinching, or spanking;
(b) restraining a child's movement by binding or tying;
(c) use of abusive, demeaning or profane language;
(d) forcing or withdrawing food, rest or bathroom opportunities; or
(e) confining a child in a locked closet, room, or similar area.

(4) "Time out" that enables the child to regain control of himself or herself and that keeps the child in visual contact with the care giver shall be used selectively, taking into account the child's developmental stage and the usefulness of "time out" for the individual child.

(5) For children 18 months and older "tantrums" shall be interrupted every three minutes until control is obtained.

R430-60-9. Care Giver to Child Ratios.

(1) The licensee must maintain minimum child care giver to child ratios as provided in Table 1.

<table>
<thead>
<tr>
<th>Care giver</th>
<th>Children</th>
<th>Limits for Mixed Ages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>no children under age 2</td>
</tr>
<tr>
<td>1</td>
<td>3</td>
<td>3 children under age 2</td>
</tr>
<tr>
<td>1</td>
<td>6</td>
<td>4 children under age 2</td>
</tr>
</tbody>
</table>

(2) Regardless of the number of other children and the minimum ratios in Table 1, if only two care givers are present, the facility may not care for more than four children under the age of two.

(3) For no more than 20 minutes, the minimum ratios in Table 1 may not exceed one care giver to 16 children if none of the children are younger than 24 months old, to allow for an additional care giver to arrive at the program.

(4) An hourly program that exceeds the ratio in Table 1, must be able to document having care givers, who, as a condition of their employment, are on call to come to the program as needed and arrive at the program within 20 minutes after receiving notification to report.

(5) Whenever the total number of children present to be cared for at a hourly program is more than 20, children younger than 24 months must be cared for in an area that is physically separated from older children. All children 24 months old and older may be cared for in the same group in the same area.

(6) A child of an employee or owner age four or older will not be counted for determining care giver to child ratios.

R430-60-10. Medications.

(1) If an hourly child care provider chooses to administer medications to a child then a trained, designated care giver shall administer medications.

(2) Training for the administration of medications shall include the following:

(a) Oral over-the-counter and prescription medications must be in the original or pharmacy container;
(b) have the original label;
(c) include the child's name;
(d) have child proof caps; and
(e) have instructions for administration.

(3) The parent or guardian must complete a medication release form for each child receiving medications at the facility that contains:

(a) the name of the medication;
(b) the dosage;
(c) the route of administration;
(d) the times and dates to be administered;
(e) the illness or condition being treated; and
(f) the parent or guardian signature.

(4) Medication records shall be maintained that include:

(a) the times, dates, and dosages of the medications given;
(b) the signature or initials of the care giver who administered the medication; and
(c) documentation of any errors in administration or adverse reactions.
(5) The director or designee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(6) Medications shall be secured from access to children.

(7) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.

(8) Unused medications shall be returned to the parent or guardian. Out-of-date medications shall be promptly discarded or returned to the parent or guardian to be destroyed.


(1) The director shall establish a procedure for care givers to check who has written authorization to pick up children. Only parents or persons with written authorization from parents shall be allowed to take any child from the facility, except that verbal authorization may be used in emergency situations. The director shall ensure a sign in and sign out document for the past three months is maintained for Department review.

(2) The director shall ensure that the parents or guardians are informed of all injuries and incidents that occur during the child's stay at the program. A written report shall be provided to the parents, and notification shall occur at the time that the injury or incident occurs if medical treatment is required. At the time of admission, the director shall obtain a signed permission form from the parent or legal guardian for emergency medical treatment.

(3) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the licensee shall:

   (a) notify the Department within 24 hours of occurrence, either by phone or facsimile; and

   (b) submit to the Department within five business days of occurrence a written injury and accident report.

(4) The director shall develop a policy to address how long a child may cry before the parent is contacted.


(1) The licensee shall have an array of activities and sufficient supplies at the center, which are appropriate for the age and development of the children accepted for care.

(2) There shall be a minimum of 35 square feet per child of indoor play area for each child in care under age 14.

(3) If an outdoor play area is available, the area shall have at least 40 square feet for each child using the play area at any given time for each child in care under age 14.

(4) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict, the director may request a variance from the Department. Any gaps within the fence shall not be greater that three and one-half inches. The bottom edges of fence shall not be more than three and one-half inches above the ground.


(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage to the facility or pose a health hazard. The director shall hold simulated fire drills monthly and semi-annual disaster drills. The director shall document all drills, including date, participants, and problems encountered.

(a) The director shall post evacuation routes which indicate the location of fire alarm boxes and fire extinguishers in prominent locations throughout the center. Each center shall have approved fire extinguishers and be inspected by a local fire authority annually.

(b) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number.

(c) The names and telephone numbers of the emergency medical personnel, fire department, police, poison control and license holder shall be posted by the telephone.

(2) A person may not smoke or use tobacco in any child care facility during the period of time a child is present in the facility. All lighters and matches shall be inaccessible to children.

(3) The director of the facility shall establish written policies and monitor the facility and care givers to ensure that the use and accessibility to [alcohol, tobacco, illegal substances or] the use of [illegal substances or] illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are in care.

(4) The toilet rooms of the hourly program must be cleaned and disinfected daily.

(5) If the program accepts a child in a diaper, then the diaper shall be changed only in a designated diaper changing area. The designated area shall:

   (a) have diaper changing procedures posted;

   (b) be separate from food storage, food preparation, and eating areas.

   (c) have a hand sink equipped with soap, hot and cold running water within three feet of the diaper-changing surface; and

   (d) have a smooth nonabsorbent diaper changing surface, railing and a sanitary container for soiled and wet diapers.

(6) Care givers shall change a child's clothing when it is soiled with fecal material or urine and place the clothing into a leakproof container to be sent home with the parent or legal guardian. Clothing soiled with feces or urine shall not be rinsed at the facility.

(7) Hand washing policies shall be followed to assure protection from contamination and the spread of microorganisms. Hand washing procedures shall be posted at all hand washing sinks.

   (a) Care givers shall wash and scrub their hands for 20 seconds with soap and warm running water at times specified in policy.

   (b) Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible.

(8) The licensee shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.

(9) The director shall keep and maintain a first aid kit and a portable blood and bodily fluid clean-up kit. All care givers shall know the location of and how to use the kits.

(10) Equipment and furniture must be durable, in good repair, structurally sound, and stable following assembly and installation.

   (a) Equipment must be free of sharp edges, dangerous protrusions, openings where a child's extremities could be pinched or crushed, and openings or angles that could trap part of a child's body.
(b) Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. High chairs must have safety straps.

(c) Toys and equipment that are likely to be m outhed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

(d) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

(e) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(f) All pieces of outdoor playground equipment shall be surrounded by a resilient surface of loose cushioning, at least nine inches in depth, or mats manufactured for such use, consistent with the guidelines of the Consumer Product Safety Commission and the standards of the American Society for Testing and Materials. All indoor playground equipment, for example slides and climbers, shall be surrounded by cushioning materials, such as mats, in a six foot fall zone. Indoor play equipment shall not exceed three feet at the highest point.

(g) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors and ceilings. Rugs must have a non-skid backing or be firmly fastened to the floor and be free from tears, curled, or frayed edges, and hazardous wrinkles.

(h) Infant walkers with wheels are not permitted in hourly childcare programs.

(11) Hot water accessible to children shall be maintained between the temperature of 110 degrees Fahrenheit and not exceed the scalding standard of 120 degrees Fahrenheit.

(12) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(13) There shall be adequate housekeeping services to maintain a clean and sanitary environment.

(14) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow and other hazards.

(15) The center shall maintain air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(16) If sleeping equipment or mats are provided for rest time, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(17) There shall be at least one toilet and lavatory for each 15 children. Care givers shall directly supervise children when using bathrooms that are available to the general public.


(1) If the facility permits animals in the facility:

(a) the animals shall be clean and in good health;

(b) the animals shall be confined in enclosures, hand held, under leash control, or under voice control;

(c) the animals shall have current vaccination records available at the facility for all diseases transmissible to humans;

(d) the animals shall have no history of dangerous or aggressive behavior; and

(e) the animals shall be excluded from food preparation, storage or dining areas.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment.

(3) The director shall inform the parent or legal guardian of any known allergic or immune suppressed child of the types of animals kept at the facility.

(4) Children shall not be permitted to handle reptiles, including turtles and lizards.


(1) If food service is provided, the center's food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, and with the local health department food service regulations.

(2) If the local health department completes an inspection, the most recent inspection report shall be maintained at the center for review by the Department.

(3) All food served in the center by care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents for service to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents for individual child use must be labeled with the child's name.

(4) All care givers who prepare or serve food and snacks must have a food handler's permit.

(5) Children's food shall be served on plates, napkins or other sanitary holders, which includes a high chair tray. Multiple use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(6) If a food service is provided, care givers shall serve meals and snacks according to the center policy, but at least once every three hours.

(7) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(8) Baby food must be refrigerated after opening, marked with the date and time and discarded if not consumed within 24 hours.

(9) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding.

(10) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.


[Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-13-4 and Section 26-13-108.] [The Department may impose civil monetary penalties in accordance with 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 a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.
KEY: child care facilities
[September 22, 1999] 2001
26-39

Health, Health Systems Improvement,
Child Care Licensing
R430-90
Licensed Family Child Care

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24266

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Establish standards for the operation and maintenance of licensed family child care providers who care for 1 to 16 children in their home consistent with recent changes to the standards for child care centers.

SUMMARY OF THE RULE OR CHANGE: In Section R430-90-3: changes the definition of Direct Supervision; and adds a definition for Infant and Toddler. In Section R430-90-5: requires the care giver to be physically present on-site and provide supervision both indoors and outdoors; permits children in care to participate in outside supervised activities with the parent permission; and allows the care giver to have a substitute in the absence of the care giver. In Section R430-90-6: requires orientation to procedures for releasing children to authorized individuals. In Section R430-90-7: amends the discipline section to be consistent with Rule R430-100. In Section R430-90-8: deletes the requirement to have a physical examination in the records. In Section R430-90-10: deletes the requirement to have a physical examination in the records; requires parents to notify the care giver about food sensitivities; and requires the licensee to document oral over-the-counter medications which are administered. In Section R430-90-11: requires that the licensee monitor care givers, visitors, and residents of the home to ensure the use of and accessibility of alcohol, tobacco products, and sexually-explicit materials are prohibited by use at the home during the hours of child care. In Section R430-90-12: clarifies that infants are not confined to infant equipment which restricts movement for more than 30 minutes. In Section R430-90-15: requires the licensee to inform parents and guardians if firearms are kept on the premises. In Section R430-90-18: requires the licensee to inform parents and guardians if any animals are kept at the home. In Section R430-90-19: requires care givers to maintain a current food handlers permit; requires that menus are to be kept for one week and documents the substitutions made to conform with the United States Department of Agriculture Child Care Food Program guidelines; and requires a different menu to be planned for each day of the week and permits menus to be cycled. In Section R430-90-20: adds civil money penalty language as required by statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: $10,000 to copy and mail the amended rule to licensed family and family group providers. Can be met within existing appropriations.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings for local governments. If a local government operated a child care program, it would operate a commercial child care program. This rule applies only to residential family programs.
♦ OTHER PERSONS: Family members who do not have insurance have paid approximately $40 for a physical examination for a child under age 6, a savings of up to $80,000 since this requirement has been removed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Families and/or insurance providers may save up to $40 per child in care now that they do not have to have a physical examination of a child before entering care.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Substantial efforts have been made to work with regulated businesses to remove unnecessary burdens that are not necessary to assure the health and safety of children. This rule change benefits home child care providers, by adopting similar changes made for child care centers. Removing the requirement of a physical examination will save families and insurance companies the out-of-pocket cost of the examination. Regulated businesses will have fewer documentation requirements. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
285 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at dwynkoop@doh.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-1. Legal Authority.
   This rule is promulgated pursuant to Title 26, Chapter 39.

   The purpose of this rule is to establish standards for the
   operation and maintenance of licensed family child care providers
   who care for one to 16 children in their home. It establishes
   minimum requirements for the health and safety of children in
   licensed programs.

   (1) "Conditional enrollment" means that a child is admitted to
       a child care program and has received at least one dose of each
       required vaccine prior to enrollment and maintains a schedule for
       subsequent required vaccinations.
   (2) "Direct Supervision" means that the care giver must be
       able to see and hear the children, and be near enough to intervene
       when needed. "Supervision" means the function of observing,
       overseeing, and guiding a child or group of children.
   (3) "Related children" means children whose care is
       provided by their parents, legal guardians, grandparents, brothers,
       sisters, uncles or aunts.
   (4) "Infant" means a child younger than 13 months of age.
   (5) "Toddler" means a child 13 months and older, but less than
       25 months of age.

R430-90-4. License Required.
   (1) A person who provides child care in a home for nine to 16
       children unrelated to the licensee for less than 24 hours a day, with a
       regularly scheduled, ongoing enrollment, for direct or in-direct
       compensation must be licensed as a family group child care
       program.
   (2) A person who provides child care in a home for less than
       nine unrelated children for less than 24 hours per day, having a
       regularly scheduled, ongoing enrollment, for direct or indirect
       compensation may be licensed as a family child care program.

R430-90-5. Licensee Qualifications and Duties.
   (1) The licensee of the child care program must:
       (a) be at least 18 years of age; or
       (b) have a high school diploma or G.E.D.; and
       (c) have knowledge of and comply with applicable laws and
           rules.
   (2) The licensee shall establish and implement policies and
       procedures for the health and safety of children in the home.
   (3) The care giver shall be physically present on-site and
       provide care and supervision of children at all times, both indoors
       and outdoors. This includes:
       (a) awareness of and responsibility for the ongoing activity of
           each child and being near enough to intervene if needed; and
       (b) frequent in person observation of children sleeping in cribs
           and play pens.
   (4) The licensee may permit a child to participate in supervised
       out of the home activities without the care giver if:
       (a) the care giver has prior written permission from the child’s
           parent for the child’s participation; and
       (b) the licensee has clearly assigned the responsibility for the
           child’s whereabouts and supervision throughout the period of care.
   (5) The licensee may make arrangements for a substitute who
       is at least 18 years old and who is capable of providing care and
       supervision of children and handling emergencies in the absence of
       the care giver.

R430-90-6. Care Giver Qualifications.
   (1) The licensee shall ensure that each care giver or volunteer
       who has direct contact with or access to children is oriented to the
       licensed program and successfully completes the required
       orientation training before starting assigned duties. The licensee
       shall document in a care giver’s personnel record the date of
       completion of orientation training. The orientation training must
       include:
       (a) procedures for maintaining health and safety and handling
           emergencies and accidents;
       (b) specific job responsibilities;
       (c) child discipline procedures of R430-90-7; [and]
       (d) reporting requirements if the care giver witnesses or
           suspects child abuse, neglect or exploitation; and
           (e) procedures for releasing children to authorized individuals.
   (2) All care givers who provide services shall be at least 18
       years of age or have completed high school or a G.E.D.
   (3) There shall be at least one care giver at the home during
       business hours who has a current course completion [certification] in
       basic child and infant first-aid and Cardiac Pulmonary
       Resuscitation(s) (CPR), and training in the Heimlich Maneuver for
       treatment of an obstructed airway.
       (a) First-aid and CPR [certification] refers to courses given by
           the American Red Cross, the Utah Emergency Medical Training
           Council, or other courses that the licensee of the program can
           demonstrate to the Department to be equivalent.
       (b) Documentation of the completed First-Aid and CPR
           training must be in the care giver's personnel record.
   (4) The licensee must ensure that an annual documented in
       service training plan is developed and carried out. The plan shall be
       pertinent to the ages of the children in the program and must address
       the following areas:
       (a) proper hand washing and sanitation techniques;
       (b) principles of good nutrition;
       (c) proper procedures in administration and storage of
           medications;
       (d) recognizing early signs of illness, communicable diseases
           and determining if there is a need to exclude a child from the
           program;
       (e) accident prevention and safety principles;
       (f) positive guidance for the management of children;
       (g) child development; and
       (h) age appropriate activities.
   (5) If child care is provided to children under age two, the
       following in-service topics are also required:
       (a) Preventing Shaken Baby Syndrome;
       (b) Coping with crying babies; and
       (c) Preventing Sudden Infant Death Syndrome.
   (6) The licensee shall ensure that they and all care givers
       complete a minimum of 20 hours of annual in-service training. At
       least ten hours of in-service training shall be person-to-person
       instruction.
   (7) The licensee shall document successful completion of in-
       service training and maintain a record for themselves and each care
       giver which includes:
       (a) the date training was completed;
(b) the topics covered; and
(c) the trainer's name and organizational affiliation.
(8) Each care giver upon employment and each licensee shall have an initial health evaluation within the past six months and complete tuberculosis testing using the Mantoux tuberculin skin test method within two weeks of assuming care giver responsibilities. Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.
(a) All care givers with skin tests that indicate potential exposure to tuberculosis shall receive a medical evaluation for tuberculosis disease.
(b) All care givers who have documentation of previous positive reaction to the Mantoux tuberculin skin test shall present documentation of completion of therapy for tuberculosis infection or evidence of a negative chest radiograph within the past 12 months.
(c) Repeated chest radiographs are not required unless the care giver develops signs and symptoms of tuberculosis disease, as determined by a health care professional.

(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.
(2) Disciplinary measures shall be implemented so as to encourage the child's self-control. Discipline measures shall be explained to the child at the time the discipline is imposed and may include [to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:
(a) rewards for positive behavior;
(b) other forms of positive guidance;
(c) redirection;
(d) time out.
(3) Care givers shall not do any of the following: Discipline measures shall not include any of the following:
(a) [give] corporal punishment, including hitting, shaking, biting, pinching, or spanking;
(b) restraint of a child's movement by binding or tying;
(c) use of abusive, demeaning or profane language;
(d) force or withdrawing food, rest or bathroom opportunities; or
(e) [confine] confining a child in a locked closet, room, or similar area.
(4) "Time out" that enables the child to regain control of himself or herself and that keeps the child in visual contact with the care giver shall be used selectively, taking into account the child's developmental stage and the usefulness of "time out" for the individual child.
(5) For children 18 months and older "tantrums" shall be interrupted every three minutes until control is obtained.

(1) The licensee shall obtain from the parent or legal guardian an admission agreement, which identifies the following:
(a) child's full name and nickname;
(b) parent or guardian's name, address and phone number;
(c) name, address and phone number of [at least three individuals] additional persons to be notified in the event of an emergency when the parent or guardian cannot be located;
(d) name, address and phone number of the child's primary source of emergency health and dental care.
(2) The licensee shall ensure that children's records are organized and maintained to include the following:
(a) immunization record [Utah School Immunization Record - USIR] according to R396-100;
(b) [a current (within the past six months) physical examination for children under age 6 (only at admission)]
(c) child's health history required in R430-90-10[15] and any updates;
(d) injury, accident and incident reports; and
[e] medication administration records required in R430-90-10[26].
(3) The licensee of the program shall maintain care giver records to include:
(a) background screening records;
(b) initial health evaluations and TB testing;
(c) food handler's permits;
(d) first-aid and CPR [certification] course completion; and
(e) in-service training records.
(4) The licensee shall ensure a record or log is maintained to document each enrolled child's attendance.

The minimum ratio of care givers to children permitted in licensed small family and family group child care are set forth in tables 1 and 2.

<table>
<thead>
<tr>
<th>Care giver</th>
<th>Children Limits for Mixed Ages (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>1</td>
<td>6</td>
</tr>
</tbody>
</table>

(a) The mixed ages include the care giver's children under age 4.

<table>
<thead>
<tr>
<th>Care giver</th>
<th>Children Limits for Ages Group Size (b)(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>12 All Children 16 School-age</td>
</tr>
<tr>
<td>2</td>
<td>9-16 Mixed ages, 20 only four under age</td>
</tr>
</tbody>
</table>

(b) There shall be at least two care givers in the licensed family group program at all times when there are nine or more children present, counting the care givers' own children, grand children, nieces, nephews, wards, step-children, under age 12, or when more than two infant[1]s are present.
(c) The care giver's own children, grand children, nieces, nephews, wards, step-children are included in the maximum group size if they are under the age of 12.

(1) The licensee may not care for a child without proof of immunization, or evidence of conditional enrollment, or evidence of personal, medical or religious exemption. Each child shall have immunizations as required by the Utah School Immunization Law, R396-100.
(2) The licensee shall observe each child daily for signs of illness.
(a) The licensee shall notify the parent or legal guardian immediately when illness is observed or suspected.  
(b) The licensee must keep ill children separate from other children.

(3) If a communicable illness or parasite is discovered, the owner shall notify the parent or legal guardian of all enrolled children on the day of discovery. Notification shall protect the confidentiality of care givers and children.

(4) [The parent or legal guardian shall submit a physical examination for all children under age six upon admission. The physical examination shall be completed by a licensed physician, nurse practitioner, or registered nurse.]

(5) The parent or legal guardian shall provide a child health history upon admission which identifies:
(a) known food sensitivities and allergies;
(b) chronic illnesses, disabilities or medical conditions;
(c) instructions for routine care; and
(d) instructions for emergency care.

(6) The parent or legal guardian shall annually review and update the child's health history with the licensee.

(7) If the licensee chooses to administer prescribed or oral over-the-counter medications then:
(a) Medications may be administered to children only by a designated care giver who does the following:
   (i) check the label and confirm the name of the child,
   (ii) read the directions regarding measured doses, frequency, expiration date, and other administration guidelines, and
   (iii) properly document administration of medication records according to subsection (d).
(b) Oral [over-the-counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have written instructions for administration.
(c) The parent or legal guardian must complete a medication release form for each child receiving medications that contains:
   (i) the name of the medication,
   (ii) the dosage,
   (iii) the route of administration,
   (iv) the times and dates to be administered,
   (v) the illness or condition being treated, and
   (vi) the parent's or legal guardian's signature.
(d) The care giver who administers a child's medication shall maintain a medication record that includes:
   (i) the time, date, and dosage of the medication given;
   (ii) the signature or initials of the care giver who administered the medication; and
   (iii) documentation of any errors in administration or adverse reactions.
(e) The licensee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.
(f) Medications shall be secured from access to children.
(g) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.
(h) The licensee shall return all unused or out-of-date prescription and oral over-the-counter medications to the parent or legal guardian.

(1) The licensee shall establish a procedure for care givers to check who has written authorization to pick up children. Only the parents, legal guardian, or persons with written authorization from a parent or legal guardian shall be allowed to take any child from the home, except that verbal authorization may be used in emergency situations.

(2) The home of the licensee shall be accessible and open to parents or legal guardians during the hours of operation.

(3) The licensee shall establish a procedure for ensuring that all children's attendance is accounted for, which shall include requiring a sign-in and out procedure.

(4) The licensee shall establish written policies and monitor care givers, visitors, and residents of the home to ensure that the use and accessibility of tobacco in any form, [the use of] alcohol, [the ingestion of] any substance (including prescription medications) in amounts known to compromise responsible judgement, and the use of or possession of [il]legal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are under care.  

(5) In the case of a serious injury to a child which requires immediate hospital treatment, the licensee shall contact the parents or legal guardians after emergency personnel have been contacted.

(6) [If the licensee shall report to the Department any fatality, hospitalization, or emergency medical treatment required for a child in care within five working days from the occurrence. If any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the licensee shall:
   (a) notify the Department within 24 hours of occurrence, either by phone or facsimile; and
   (b) submit to the Department within five business days of occurrence a written injury and accident report.]


(1) The licensee shall develop a daily activity plan that is designed for the age and development of the children accepted for care and ensure that there are sufficient supplies on hand.

(2) There shall be a minimum of 35 square feet of indoor play area per child for each child in care under age 14. Toilet rooms, closets, hallways, and alcoves may not be included in calculating indoor play space. Play space does not include areas in the care giver home which are not included in the child care area.

(3) Outdoor play areas shall have at least 40 square feet per child for each child in care under age 14. The total outdoor play area shall accommodate at least 10 percent of the licensed capacity at one time.

(a) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict with this requirement, the licensee may request a variance from the Department. Any gaps within the fence shall not be greater than three and one-half inches. The bottom edges of the fence shall not be more than three and one-half inches above the ground.

(b) Outdoor play areas shall have a shaded area to protect children from excessive sun and heat. Drinking water shall be continuously accessible to children in the outdoor play area.
(4) If off-site activities are provided, parent or legal guardian permission is required for children to participate. Care givers shall take with them emergency phone numbers for each child attending the activity.

(5) If swimming activities are planned, care givers shall accompany children at pool side and lifeguards and pool personnel are not counted in care giver ratios.

(6) If care is provided to infants, a care giver shall provide physical and verbal stimulation every 30 minutes to each infant during waking hours, including the opportunity for physical activity. Physical activity may not confine an awake child to a single device, such as a walker or swing. Infant equipment which restricts active movements for more than 30 minutes.


(1) The licensee shall maintain documentation that any vehicle used for transporting children has a current vehicle registration, insurance for child care transportation, safety inspection and shall maintain the vehicle in a clean and safe manner.

(2) Each vehicle shall:
   (a) have a first-aid kit and body fluid clean-up kit;
   (b) be equipped with individual, size-appropriate safety restraints such as car seats or seat belts which are described in the federal motor vehicle safety standards contained in the Code of Federal Regulations, title 49, section 571.213, for each child that are appropriate to the vehicle type and are installed and used in the manner prescribed by the manufacturer;
   (c) be enclosed; and
   (d) be locked during transport.

(3) Smoking in vehicles is prohibited at all times that children are in the vehicle.

(4) Any vehicle used for transporting children shall be driven by an adult who holds a current state driver's license that authorizes the driver to operate the type of vehicle driven.

(5) The driver shall ensure that no child is unattended in the vehicle. The driver shall remove the keys whenever the driver is not in the driver's seat.


(1) All care givers shall comply with the universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen Standard.
   (a) The licensee shall keep and maintain a portable blood and bodily fluid clean-up kit.
   (b) All care givers shall know the location of the kit and how to use it.
   (c) All care givers shall wear new disposable latex gloves or an approved equivalent listed in OSHA part 1910.1030 for first-aid procedures involving blood or clean-up of blood containing bodily fluids.

(2) If children are admitted for care who require diapers, the following applies:
   (a) Care givers shall change a child's diaper on a clean, smooth, washable, non-absorbent diapering surface and sanitize the surface after each use.
   (b) The diapering area shall not be located in a food preparation area.
   (c) Care givers shall place soiled diapers in a container that is lined and has a tight[ly] fitting lid or take the diapers directly to an outside covered receptacle. Care givers shall clean and disinfect the inside diaper containers daily.

(3) If a child's clothing is soiled by fecal material or urine, a care giver shall change the clothing promptly and place the clothing in a leakproof container to be sent home with the parent or legal guardian.

(4) If personal hygiene items for children are maintained at the home such as combs or toothbrushes, they shall not be shared between children and shall be labeled and stored separately.

(5) The licensee shall clean and sanitize indoor activity equipment and toys weekly or more often as necessary.
   (a) Stuffed animals shall be machine washable.
   (b) If four or more infants are present for care, the licensee shall clean and sanitize the indoor equipment and toys used by the infants during the day.

(6) Care givers shall assure protection from contamination and the spread of microorganisms by implementing good hand washing practices. Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible. Care givers and children shall wash their hands after using the toilet, before and after eating, and before and after food preparation.

(7) Single-use paper towels or individually labeled cloth towels shall be used for drying hands. If cloth towels are used, the care giver shall wash the towels daily.


(1) Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(2) Infants and toddlers shall not have access to toys smaller than 1-1/4 inches in total diameter or length. Toys and equipment used by children must comply with the guidelines of the Consumer Product Safety Commission.

(3) High chairs shall have safety straps or devices to prevent children from falling out.

(4) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area during times when children are on the premises. The licensee shall inform the parents and guardians that there are firearms on the premises.

(5) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(6) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be stored away from children in a locked or protected area [to prevent access to children]. All toxic or hazardous chemicals shall be stored in the original container, or labeled in the container.

(7) Fireplaces, open-face heaters, and wood burning stoves shall be inaccessible to children when in use. Portable space heaters are not permitted when children are on the premises.

(8) Outdoor play equipment shall be located over soft material or grass.

(9) All water hazards such as a swimming pool, stationary wading pool, docks, and fish ponds shall be fenced to prevent access by children.

(10) Sharp objects, medicines, plastic bags, poisonous plants, lighters and matches must be stored out of reach and inaccessible to children.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

(12) Strings and cords long enough to encircle a child's neck, such as those found on pull toys, window blinds, or drapery cords, shall be inaccessible to children under five years of age.
(13) Any structure built prior to 1978 which has peeling, flaking, chalking, or failing paint on the interior or exterior shall be tested for lead-based paint. If paint lead levels are equal to or exceed 0.06% by weight, the structure must be remodeled by encapsulation or enclosure when possible or by complete removal of lead-based paint by trained individuals.

(14) Infant walkers with wheels are not permitted.

(15) The licensee shall provide separate sleep equipment for each infant designed for infant use, such as a crib, bassinet, portacrib, or play pen. Infants shall be placed on their backs for sleeping.

R430-90-16. Fire, Emergency, and Disaster.

(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure, or other disasters that could create structural damage to the home or pose a health hazard. The plan shall include the procedure to transport and evacuate children to another location and the procedures to turn off gas, electricity and water.

(2) The licensee shall have an emergency plan in the case of a missing child or death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(3) The licensee shall hold simulated fire drills quarterly and an annual disaster drill. The licensee shall document the date of drills, participants, and the problems encountered.

(4) Each home shall have fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit at ground level shall be present leading to an open space.

(5) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number. The names and telephone numbers of the emergency medical personnel, fire department, police, and poison control shall be posted by the telephone.

(6) The licensee shall maintain a first-aid kit at the residence.


(1) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(2) There shall be adequate housekeeping services to maintain a clean, odor free, and sanitary environment.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(4) The licensee shall maintain the home at air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(5) If sleeping equipment or mats for sleeping are provided, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(6) The home shall be maintained to ensure that the equipment, fixtures, and furnishings are safe and in good repair.

(7) Sand boxes and outdoor play areas shall be kept free of animal excrement and harmful objects.


(1) If the licensee permits animals at the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available at the program for all diseases transmissible to humans; and

(c) the animals shall have no history of dangerous or aggressive behavior.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment. Animal cages and equipment shall not be cleaned in food preparation or food storage areas.

(3) The licensee of the program shall inform the parent or legal guardian of any animal allergies to the guardian, and the types of animals kept at the home.

(4) Children shall not handle reptiles, including turtles and lizards.


(1) If the local health department completes an inspection, the inspection report shall be maintained at the home for review by the Department.

(2) Food prepared by the care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents or legal guardians to serve to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents or legal guardians for individual child use must be labeled.

(c) Baby food must be refrigerated after opening, marked with the date and time of opening and discarded if not consumed within 24 hours of opening;

(d) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding.

(3) All care givers who prepare or serve food and snacks must have a current food handler's permit.

(4) Children's food shall be served on plates, napkins or other sanitary holders, which include a high chair tray. Multiple-use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(5) Meals and snacks shall be served at least once every three hours, or according to the menu:

(a) The current week's menu shall be posted for review by parents or guardians and all substitutions shall be noted on the menu and retained for one week. If substitutions are made, the menu must meet the requirement of the United States Department of Agriculture (USDA) Child Care Food Program guidelines;

(b) Menus can be obtained from the Department or shall be Department-approved, independently approved and signed by a registered dietitian, or approved through the United States Department of Agriculture Child and Adult Care Food Program; and

(c) A different menu shall be planned for each day of the week and menus may be cycled.

(6) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(7) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.


[any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for...]

50
any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-39-108. The Department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act and Section 26-39-108, 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 a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
[November 2, 2000] 2002
26-39

Panel

Health, Health Systems Improvement, Licensing
R432-35
Background Screening

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24268

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To define the circumstances under which a person who has been convicted of or charged with a criminal offense or who has a substantiated report of child abuse or adult abuse may be excluded from employment in a covered health care facility.

SUMMARY OF THE RULE OR CHANGE: In Section R432-35-3: permits a covered health care facility to screen contracted persons (e.g., pool personnel) to be screened; and defines unsupervised contact and volunteer. In Section R432-35-4: defines the Department's role to review criminal convictions to determine if action should be taken to protect the health and safety of patients and residents; and requires the Department to send a Notice of Agency Action to the health care provider and the individual explaining the action and appeal rights. In Section R432-35-5: defines the criminal convictions and arrests which would exclude a person from providing direct patient care. In Section R432-35-7: defines the circumstances where the Department may hold in abeyance a decision of denial of employment for covered individuals with arrests or pending criminal charges, if the facility provides supervision and the Department is provided assurances that the work arrangement will not pose a threat to the safety and health of the residents and patients. In Section R432-35-8: adds the penalty language required by statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-21-9.5

ANTICIPATED COST OR SAVINGS TO:
THE STATE BUDGET: Cost of $500 to distribute copies of the amended rule to each affected covered health care facility.
LOCAL GOVERNMENTS: No cost to local governments, unless they own and operate a covered health care facility.
OTHER PERSONS: This rule sets standards for when background screening will bar a person from employment in a covered health care facility. It does not directly impose any costs or savings on any party.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person will incur any costs as a result of the standards set forth in this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Background screening is mandated by statute and is an important safeguard for patients. This rule sets standards to guide the Bureau of Licensing on how to respond to information gained from the screening and to standardize which offenses bar someone from working in this industry. This should not have a fiscal impact on businesses. Rod L. Betit

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Doug Springmeyer or Debra Wynkoop at the above address, by phone at 801-538-6971 or 801-538-6152, by FAX at 801-538-6306 or 801-538-6325, or by email at dspringm@doh.state.ut.us or dwynkoop@doh.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R432-35. Background Screening.
R432-35-1. Authority.
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 management information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

(1) Home health care agencies;
(2) Hospice agencies;
(3) Nursing Care facilities;
(4) Assisted Living facilities;
R432-35. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of or charged with a criminal offense or who has a substantiated report of child abuse or neglect or 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. 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 assisted living 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 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; or
   f) chronic or severe neglect; or
   g) financial exploitation.

4) "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.

5) "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.


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[222] - the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department. The Department shall submit them to the Criminal Investigations and Technical Services Division for additional screening.

2) The fingerprint card that the covered individual submits shall be prepared either by the local law enforcement agency or an agency approved by local law enforcement.

3) The Criminal Investigations and Technical Services Division, shall report the background screening and forward the fingerprint card to the Department. The Department shall review the criminal convictions to determine whether to approve the covered individual for licensing or employment.

4) 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.

5) If based upon the BCI screening, the Department denies the covered individual a license, volunteer position or employment, the Department shall send a Notice of Agency Action to the health care provider or covered individual stating that the application is denied.

6) The Department shall make the following determinations if a covered individual has a criminal history record:

a) If the covered individual was convicted of a felony, the covered individual may not provide direct services to a patient or volunteer in a program licensed by the Department.

b) If the covered individual was convicted of a misdemeanor within the past five years, the covered individual may not provide direct patient services or volunteer in a health care program licensed by the Department if the misdemeanor involves offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense.

7) If the covered individual is a person with a felony or misdemeanor conviction who resides in a home where health care is provided, the Department shall not issue a license for health care in the home. 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.

8) 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.

9) The Executive Director may consider an approval for licensing or employment of a covered individual who has been convicted of a misdemeanor, but not a misdemeanor involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, according to the following criteria:

a) If the convictions are older than five years, the covered individual may provide direct patient care in a health care program licensed by the Department.

b) If the convictions are within the last five years the Department shall request that the employee sign a waiver to disclose the convictions to the employer. The covered health care facility may request a variance to the rule to permit the individual to remain employed. If the covered health care facility does not submit a variance then the Department shall make a comprehensive review of the individual circumstances.

i) If the Department finds that the covered individual's conduct is not adverse to the public health, morals, welfare, and safety of children or elderly or disabled adults, the covered individual may provide direct patient care in a health care facility licensed by the Department.
(ii) If the convictions demonstrate a pattern of behavior which indicates that the covered individual’s conduct is adverse to the public health, morals, welfare, and safety of children or elder and disabled adults, the covered individual may not provide direct patient care in a health care facility licensed by the Department.

(4) The Department shall rely on the BCI as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the covered individual is denied a license or employment based upon the BCI and the covered individual disagrees with the BCI report, the covered individual may seek redress through the Criminal Investigations and Technical Services Division, as provided in Section 77-18-10.

(6) All covered individuals shall report all felony and misdemeanor convictions of covered individuals for offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense to the Department within 48 hours of conviction.

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;

(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.


(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, from the management information system maintained by the Utah Department of Human Services (DHS) for children and disabled or elder adults.

(2) If a covered individual appears on the management information system, the Department shall review the date of the 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 child or disabled or elder adult abuse management 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 abuse, he must pursue an appeal with the DHS. If the covered individual agrees with the substantiated finding of abuse 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, the Department may hold the license or employment denial in abeyance until DHS renders a decision.

(6) If the DHS determines a covered individual has a substantiated 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 R432-35(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.


The department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, 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 $5,000 per day.

KEY: health care facilities  

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment deletes Subsection R477-9-1(5) that prohibits employees from carrying firearms in any state facility or vehicle or while on state business. This subsection was written to address the obligation of an employer to provide a safe working environment for employees. A recent review by legal counsel indicates that this subsection may be in conflict with Section 76-10-500 which reserves authority for firearms regulation to the Legislature alone. Because of this possible conflict, the subsection is being deleted.

SUMMARY OF THE RULE OR CHANGE: Deletes Subsection R477-9-1(5).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ LOCAL GOVERNMENTS: None--this rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--these rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. Section 67-19-15 limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or saving on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
Room 2120 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:  
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.
   Employees shall comply with the standards of conduct established in these rules and the policies and rules established by their agency management.
   (1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.
      (a) Employees shall --
         (i) Comply with the standards established in their individual performance plans;
         (ii) Maintain an acceptable level of performance and conduct on all other verbal and written job expectations;
         (iii) Report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent them from performing their job effectively and safely.
         (iv) Inform their supervisor of any unclear instructions or procedures.
      (2) Employees shall make prudent and frugal use of state funds, equipment, buildings, and supplies.
      (3) Employees who report for duty or attempt to perform the duties of their positions while under the influence of alcohol or nonprescribed controlled substances, shall be subject to corrective actions or discipline in accordance with R477-10-2, R477-11 and R477-14.
      (a) The agency may decline to defend and indemnify employees found violating this rule, in accordance with 63-30-36 section (c)(ii) of the Utah Governmental Immunity Act.
      (4) Employees shall not drive a state vehicle, or any other vehicle, on state time while under the influence of alcohol or controlled substances.
      (a) Employees who violate this rule shall be subject to corrective action or discipline pursuant to R477-10-2, R477-11 and R477-14.
         (b) The agency may decline to defend or indemnify employees who violate this rule, according to section 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.
[--- (5) Employees shall not carry firearms in any facility owned or operated by the state, or in any state vehicle, or at any time or any place while on state business.
--- (a) This rule shall not apply to sworn officers as defined by Section 53-13-103, or employees whose assigned duties require them to use a firearm.
--- (b) Employees who violate this rule shall be subject to disciplinary action pursuant to R477-11.]

   (1) State employment shall be the principal vocation for full-time employees governed by these rules. An employee may engage in outside employment under the following conditions:
      (a) Outside employment must not interfere with an employees' efficient performance in his state position.
      (b) Outside employment must not conflict with the interests of the agency or the State of Utah.
      (c) Outside employment must not give reasons for criticism or suspicion of conflicting interests or duties.
      (d) Employees shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16 Employee Ethics Act.
      (e) Agency management may deny employees permission to engage in outside employment or to receive payment if they determine the outside activity causes a real or potential conflict of interest.
      (i) Employees may grieve this decision.
      (ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

   (1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:
      (a) Outside activities must not interfere with our employees' efficient performance in his state position.
      (b) Outside activities must not conflict with the interests of the agency or the State of Utah.
      (c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.
      (2) An employee shall not use his state position or any influence, power, authority or confidential information he receives in that position, or state time, equipment, property, or supplies for private gain.
      (3) An employee shall not receive outside compensation for performing state duties, except for the following:
         (a) Awards for meritorious public contribution.
         (b) Honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule.
         (c) Usual social amenities, ceremonial gifts, or non-substantial advertising gifts.
      (4) An employee shall declare a potential conflict of interest when he is required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.
   State career service employees may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The following rules apply to career service employees in all salary ranges and positions.
   (1) Any state career service employee elected to any partisan or full-time non-partisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. Employees shall not receive annual leave while serving in a political office.
   (2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, state employees may voluntarily contribute to any party or any candidate.
   (3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.
(4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

(5) This rule shall not apply to employees who are restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. To determine whether an employee shall adhere to the federal Hatch Act, employees may contact DHRM or the employing agency's Human Resource office for guidelines.

(6) Violations of law governing political activity shall be reported in writing to the Executive Director. The Executive Director, DHRM, shall investigate the validity of any allegation and assess the extent to which any activity was knowingly and willfully conducted in violation of law.

R477-9.5. Employee Indebtedness to the State.

(1) Employees indebted to the state because of an action or performance in their official duties may have a portion of their pay that exceeds the minimum federal wage withheld. Overtime pay shall not be withheld.

(a) The following three conditions must be met before withholding of pay may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the pay.

(iii) Employees must be notified of this rule which allows the state to withhold pay.

(b) Employees terminating from state service will have pay withheld from the last paycheck.

(c) Employees going on leave without pay for more than two pay periods may have pay withheld from their last paycheck.

(d) The state may withhold an employee's pay to satisfy the following specific obligations:

(i) Travel advances where travel and reimbursement for the travel has already occurred;

(ii) State credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) Evidence that the employee negligently caused loss or damage of state property;

(iv) Payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) Misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes repayment for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) Overpayment of pay determined by evidence that an employee did not work the hours for which they received pay or was not eligible for the benefits received and paid for by the state.

(4) Excessive reimbursement of funds from flexible reimbursement accounts.

(5) Other obligations that satisfy the requirements of R477-9.4(1) above.

(6) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.


The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management


67-19-6

Human Services, Recovery Services

R527-5

Release of Information

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24190

FILED: 11/05/2001, 12:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to more closely reflect the Government Records Access and Management Act (GRAMA) requirements in statute as well as Office of Recovery Services policy.

SUMMARY OF THE RULE OR CHANGE: The sections on records classification have been expanded; and sections regarding contesting information have been streamlined to lessen confusion. A section on fees has been added.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63, Chapter 2; and Section 62A-11-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Unknown--although the fee section has been added, these fees have been in effect per agency policy since the inception of the GRAMA law. Therefore, this rulemaking is not expected to generate additional revenue nor is it expected to result in savings.

❖ LOCAL GOVERNMENTS: None--administrative rules of the Office of Recovery Services do not apply to local governments.

❖ OTHER PERSONS: Unknown--although the fee section has been added, these fees have been in effect per agency policy since the inception of GRAMA law. Therefore, this rulemaking is not expected to result in specific costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Unknown--although the fee section has been added, these fees have been in effect per agency policy since the inception of GRAMA law. Therefore, this rulemaking is not expected to result in additional costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not adversely affect businesses. In general, GRAMA law affects individual's access to information, not businesses.
THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Joyce Allred at the above address, by phone at 801-536-8948,
by FAX at 801-536-8509, or by Internet E-mail at jallred@hs.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Emma Chacon, Director

R527-5. Release of Information.
R527-5-1. Statutory Authority.

The Office of Recovery Services' case information has been classified in accordance with Title 63, Chapter 2, the Government Records Access and Management Act (GRAMA).

1. "LCS" means Location and Collection System, a national database maintained and controlled by the Federal Office of Child Support Enforcement (OCSE) within the Department of Health and Human Services (HHS), Administration for Children and Families (ACF). It contains several subsystems including "FPLS" (Federal Parent Locator Service), "NDNH" (National Directory of New Hires), and the Tax Refund/Administrative Offset program which has been expanded from the former Federal Tax Offset Program.

2. Terms used in this rule, other than LCS and FPIS, are defined either explicitly in section 63-2-103 or implicitly in the text of subsection 63-2-201(3)(b).

3. "Restricted", as used in subsection 63-2-201(3)(b), refers to records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds. "Restricted" is not considered a GRAMA classification and restricted information is not subject to the procedures for access and disclosure outlined in GRAMA.

1. Written requests for information governed by GRAMA shall be submitted in accordance with section 63-2-204 to the appropriate ORS office that maintains the record:

A. OFFICE OF RECOVERY SERVICES
ATTN: [Finance Unit]GRAMA
P.O. BOX 45011
515 East 100 South
Salt Lake City, Utah 84145-0011.

B. OFFICE OF RECOVERY SERVICES

ATTN: MSG UNIT/GRAMA
523 Heritage Blvd., Suite 1
Layton, Utah 84041

C. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
2540 Washington Blvd.
Ogden, Utah 84401.

D. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
150 East Center St.
Provo, Utah 84606.

E. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
1088 South Highway 89
Richfield, Utah 84701.

F. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
168 North 100 East
St. George, Utah 84770.

2. Written requests for expedited release of information in accordance with section 63-2-204 shall be submitted to:

A. OFFICE OF RECOVERY SERVICES
ATTN: [Finance Unit]GRAMA
515 East 100 South
P.O. Box 45011
Salt Lake City, Ut. 84145-0011


A request to appeal the denial to access a record governed by GRAMA shall be submitted in accordance with Section 63-2-401 to:

1. the Director of the Office of Recovery Services for records maintained by Financial Services, Management Services, or ORSIS;

2. the [Bureau]Regional Director of the Bureau of Investigations and Collections (BIC) in charge of the BIC team that maintains the record;

3. the Regional Director of Child Support Services (CSS) in charge of the CSS team that maintains the record;

4. the [Bureau]Regional Director of the Bureau of Collections for Children in Care (CIC) in charge of the CIC team that maintains the record;

5. the [Bureau]Regional Director of the Bureau of Medicaid Collections (BMC) in charge of the BMC team that maintains the record.

R527-5-5. Public Information.

1. In accordance with Utah Code Section 63-2-201 et seq., information that is not classified as private, controlled, protected or restricted is public information.

2. In accordance with Utah Code Section 63-2-306, a record may be classified or reclassified after the record has been requested.

R527-5-6. Private Information.

1. The following case information shall be considered as private in all Office of Recovery Services (ORS) case record:
   a. information about an applicant or recipient of public assistance or child support services, or about the applicant or recipient’s children, except it may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah’s child
support enforcement plan and all other programs administered by ORS;
   — b. the social security number of a child, an obligor, an obligee or of any third party, except it may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by ORS;
   c. the income of the obligee and the obligor except when establishing or adjusting a support amount in which case the income of the obligee and the obligor may be released to the court or the administrative-presiding officers and to the other party or the other party's authorized representative;
   d. the obligor's address, telephone number, and employer, and insurance coverage if the obligor is a state employee, except that:
      i. this information may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by ORS;
   ii. this information may be released to the Department of Human Services, the Department of Health, the Department of Workforce Services, and to the investigative staff of the following agencies: the Departments of Public Safety, Corrections, Natural Resources, and the State Tax Commission.
   iii. the name of the obligor's employer may be released to the obligee if the information is necessary for the obligee to file a health insurance claim and the name of the employer is the same as the insurance plan;
   iv. if the obligor is a state employee, the obligor's insurance coverage may be released to the obligee if the information is necessary for the obligee to file a health insurance claim.
   v. the obligor's address may be released to the obligee in cases in which the obligee has not applied for child support enforcement, but has only applied for locate services as described in R527-60-1;
   vi. unless the obligor has specifically asked ORS to safeguard and/or to not release his/her address, ORS may release the obligor's address to the obligor's attorney, or to the obligor who is acting pro se, in cases where the obligor needs to be served with legal due process as the result of a judicial action that has been initiated by the obligor or his/her attorney to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care.
   vii. unless the obligee has specifically asked ORS to safeguard and/or to not release his/her address, ORS may release the obligee's address to the obligor's attorney, or to the obligor who is acting pro se, in cases where the obligee needs to be served with legal due process as the result of a judicial action that has been initiated by the obligor or his/her attorney to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care.
   e. any information about the obligor or obligee's current spouse, except that it may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by ORS;
   f. any information which is part of a juvenile court record;
   g. records of medical or psychological services, including diagnosis and past history of disease or disability;
   h. any information received about the obligor or the obligee from a financial institution, except that it may be disclosed as necessary to establish, modify, or enforce a child support obligation.
   2. The following information shall be considered as private for the specific program:
      a. Foster Care/Youth Corrections:
         i. the current placement of the child;
         ii. the criminal record of the youth offender;
         iii. the financial circumstances of the parent(s), including the monthly support amount, except the financial circumstances and the monthly support amount may be disclosed to the court or the caseworker, but not to the child, youth offender, or the provider;
      b. Medicaid Collections/State Hospital/State Developmental Center;
         i. records of medical services provided;
         ii. medical data, including diagnosis and past history of disease or disability;
         1. Private records include the following:
            a. information obtained from the Department of Workforce Services;
            b. records concerning an individual's eligibility for unemployment insurance benefits;
            c. any information, including the social security number, about a IV-D applicant for or recipient of child support services or a recipient of IV-A, Medicaid and Food Stamps assistance.
            d. any information, including the social security number, about the children of a IV-D applicant for or recipient of child support services or a recipient of IV-A, Medicaid and Food Stamps assistance;
            e. the income of the obligee and the obligor;
            f. any information accessed about the obligor or obligee from a state automated database including:
               (i.) records concerning occupational and professional licenses;
               (ii.) ownership and control of business entities; and
               (iii.) records received from the state new hire registry;
            g. records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation or similar medical data; and
            h. information about state employees, former employees and applicants, except as provided for in 63-2-302.
  2. Private records may be disclosed when:
   a. disclosure is required by other statutes;
   b. disclosure is for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by the Office of Recovery Services;
   c. the applicant or recipient has agreed in writing to the release of social security numbers;
   d. an obligor's attorney or the obligor acting pro se needs the obligee's address in order to serve legal process as the result of a judicial action to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care. This information may not be disclosed if the obligee has requested that case information be safeguarded;
   e. income information is needed to establish a support order or review a support order for possible modification. This information may only be released to the court or administrative Presiding Officer, the other party or the other party's authorized representative.
   f. the obligor's social security number is needed by certain governmental entities, including law enforcement agencies and certain state agencies and:
(i.) the requesting entity enforces, litigates or investigates civil, criminal or administrative law and the record is necessary to a proceeding or investigation; or
(ii.) the requesting entity is one that collects information for pre-sentence, probationary or parole purposes,
g. A governmental agency provides written assurance that the record is necessary to the governmental entity's duties and functions and will be used for a purpose similar to the purposes for which ORS collected or obtained the information and that the record use produces a public benefit outweighing the individual privacy right protecting the record.
h. The name of the obligor's employer may be released to the obligee if the information is necessary for the obligee to file a health insurance claim;
i. the obligor's address may be released to the obligee in locate only cases in which the obligee has not applied for child support enforcement but has only applied for locate services as described in R527-069; or
j. the obligor needs to be served with legal process as the result of a judicial action that has been initiated by the obligee pro se or obligee's attorney to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care. This information may not be disclosed if the obligor has requested that case information be safeguarded.
3. Upon request and in accordance with the requirements of Utah Code Section 63-2-202(1), a private record shall be disclosed to:
   a. the subject of the record;
   b. the parent or legal guardian of an unemancipated minor who is the subject of the record;
   c. the legal guardian of a legally incapacitated individual who is the subject of the record;
   d. any other individual who:
   (i.) has a documented power of attorney from the subject of the record;
   (ii.) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made;
   (iii.) any person to whom the record must be provided pursuant to court order; or
   (iv.) the Department of Human Services, Child Protective Services when abuse or neglect of a child is suspected.

[R527-5-6.] R527-5-7. Controlled Information.
| The following information shall be considered controlled in all ORS cases:
| 1. any information provided by third parties who have requested anonymity, including the identity of such third parties;
| 2. patient records or treatment information in Utah State Hospital cases, when the patient or responsible party has signed an authorization for the release of information. A patient or responsible party's refusal to provide an authorization for release of information may result in the responsible party being assessed for the full cost of a patient's care, if the refusal to provide the authorization the state is unable to obtain insurance benefits that otherwise would have been paid to the state;
| 3. records of medical or psychological services, including diagnosis and past history of disease or disability.
| 1. A record is controlled if it meets the requirements of Utah Code Section 63-2-303.

2. In accordance with Utah Code Section 63-2-202, and for purposes of this rule, a governmental entity shall disclose a controlled record to:
   a. a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information; and
   b. any person to whom the record must be disclosed pursuant to court order.

[R527-5-7.] R527-5-8. Protected Information.
| The following information shall be considered protected in all ORS cases:
| 1. public assistance investigation files created or maintained for civil, criminal, administrative enforcement purposes or audit purposes;
| 2. case records prepared solely in anticipation of litigation that are not available under the rules of discovery;
| 3. test questions and answers to be used in future registration or employment examinations;
| 4. records that would identify real or personal property and the appraisal or estimated value of property held by the office pending auction;
| 5. records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;
| 6. records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8.]
| 1. A record is protected if it meets the requirements of Utah Code Section 63-2-304.

2. In accordance with Utah Code Section 63-2-202, and for purposes of this rule, a governmental entity shall upon request disclose a protected record to:
   a. the person who submitted the record;
   b. any other individual who:
   (i.) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
   (ii.) who submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or
   c. any person to whom the record must be provided pursuant to a court order.

1. Information received from the LCS shall be considered restricted in all ORS cases and may be used to locate individuals for the purpose of establishing paternity or securing financial and medical child support, or in cases involving parental kidnapping or child custody and visitation determinations, and for no other purpose. If the information has been safeguarded, it may not be used except as required by court order.
NOTICES OF PROPOSED RULES

[525-5-10.] Reconsideration of Denial to Amend a Record.

[525-5-12.] Reconsideration of Denial to Amend a Record.

KEY: child support, confidentiality*, privacy law

Notice of Continuation September 5, 1997
59-10-545(2)
62-11-107
62-11-304.4(4)
62-11-304.5
63-2
45 CFR 303.15
45 CFR 303.70

Insurance, Administration

R590-148

Long-Term Care Insurance Rule

NOTICE OF PROPOSED RULE

(Rule 525-5-4, 525-5-5, 525-5-7, 525-5-8, 525-5-10, 525-5-12. Repeal and Reenact)

DAR FILE NO.: 24237
FILED: 11/15/2001, 09:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being updated to comply with the National Association of Insurance Commissioner’s long-term care model regulation as approved by regulators and insurance industry representatives in their national meeting.

SUMMARY OF THE RULE OR CHANGE: In repealing and reenacting R590-148, no substantive provisions of the rule were lost. Instead, the additional provisions required the rule to be reorganized. The rule being reenacted includes new and
expanded provisions that affect: definitions, electronic commerce, lapse, benefit triggers, disclosures, filing requirements, reporting requirements, minimum standards, rating standards, suitability requirements, nonforfeiture requirements, marketing standards, and a modified outline of coverage format.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-1404

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: No additional people will be required to keep up with the additional workload created by these changes. Insurers selling long-term care insurance will be required to refile policy forms and rates to comply with the rule at a cost of $20 per filing.

LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency to which fees are paid by licensees.

OTHER PERSONS: As a result of the changes made to this rule, insurers selling long-term care coverage will need to change some of their policy forms and rates and then refile them with the department at a cost of $20 per filing. There are about 55 companies selling long-term care insurance in Utah. If all had one rate and one form to refile, the department would receive a total of $2,200 in filing fees. In addition, actuarial costs may increase due to rate justification requirements now in the rule. Some of these increased costs may be passed on to the consumer in the form of a higher initial rate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As a result of the changes made to this rule, insurers selling long-term care coverage will need to change some of their policy forms and rates and then refile them with the department at a cost of $20 per filing. There are about 55 companies selling long-term care insurance in Utah. If all had one rate and one form to refile, the department would receive a total of $2,200 in filing fees. In addition, actuarial costs may increase due to rate justification requirements now in the rule. Some of these increased costs may be passed on to the consumer in the form of a higher initial rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since most employers do not include long-term care coverage in their benefit package, the fiscal impact on Utah businesses will be insignificant.

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

INSURANCE ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at j whitby@insurance.state. ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-148. Long-Term Care Insurance Rule.

R590-148-1. Purpose.

The purpose of this rule is to implement standards for full and fair disclosure of the manner, content, and required disclosures for long-term care insurance to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.


This rule is issued pursuant to the authority vested in the commissioner under Sections 31A-2-201 and 31A-22-1404.


Except as otherwise specifically provided, this rule applies to all long-term care insurance policies delivered or issued for delivery in this state on or after January 1, 1993, by insurers, fraternal benefit societies, nonprofit health, hospital and medical service corporations, prepaid health plans, health maintenance organizations and all similar organizations.


For the purpose of this rule, the terms "long-term care insurance," "group long-term care insurance," "commissioner," "applicant," "policy," and "certificate" shall have the meanings set forth in Sections 31A-1-301 and 31A-22-1402.


No long-term care insurance policy, delivered or issued for delivery in this state may use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

A. "Acute illness" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals such as physicians and registered nurses, in order to maintain the individual’s health status.

B. "Home health care" means services provided by a home health agency.

C. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

D. "Mental or nervous disorder" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.
E. "Personal care" means the provision of hands-on services to assist an individual with activities of daily living, for example bathing, eating, dressing, transferring and toileting.

F. "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

G. All providers of services, including, but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the license or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.


A. Renewability. The terms "guaranteed renewable" and "noncancellable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 7 of this rule.

(1) No policy issued to an individual may contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(2) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(3) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

B. Limitations and Exclusions. No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(1) preexisting conditions or diseases;
(2) mental or nervous disorders, however this may not permit exclusion of all limitations of benefits on the basis of Alzheimer’s Disease, or any other mental or nervous disorder of organic origin;
(3) alcoholism and drug addiction;
(4) illness, treatment or medical condition arising out of;
(a) war or act of war, whether declared or undeclared;
(b) participation in a felony, riot or insurrection;
(c) service in the armed forces or auxiliary units;
(d) suicide, sane or insane, attempted suicide or intentionally self-inflicted injury; or
(e) aviation for non-fare-paying passengers.

(5) Treatment provided in a government facility, unless otherwise required by law, services for which benefits are paid under Medicare or other governmental program, except Medicaid, any state or federal workers’ compensation, employer’s liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person’s immediate family and services for which no charge is normally made in the absence of insurance.

(6) Benefits provided for a level of care cannot be conditioned on a requirement that the care be in a facility licensed for higher levels of care.

(7) This Subsection B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

C. Continuation of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or Conversion.

(1) Group long-term care insurance issued in this state on or after the effective date of this section shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers, facilities, or both, may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(3) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(4) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers, facilities, or both, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured’s age at inception of coverage under the group policy from which conversion
is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured’s age at inception of coverage under the group policy replaced.

(7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) termination of group coverage results from an individual’s failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Paragraph (6) of this section.

(8) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of insured expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of insured expenses. This provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual’s coverage under the group policy remained in force and effect.

(10) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon the individual’s relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(11) For the purposes of this section, a "Managed Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

E. Discontinuance and Replacement.

If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(1) may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(2) may not vary or otherwise depend on the individual’s health or disability status, claim experience or use of long-term care services.

F. The premiums charged to an insured for long-term care insurance may not increase due to either:

(1) the increasing age of the insured at ages beyond 65; or

(2) the duration the insured has been covered under the policy.

G. Third party notices:

(1) Notice before cancellation. No individual long-term care policy or certificate may be issued until the insurer has received from the insured either a written designation of at least one person, in addition to the insured, who is to receive notice of cancellation of the policy for nonpayment of premium; or a written waiver dated and signed by the insured electing not to designate additional persons to receive notice. The insured has the right to designate at least one person who is to receive the notice of cancellation, in addition to the insured. Designation may not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include the person’s full name and home address.

In the case of any individual who elects not to designate additional persons, the waiver shall state: “Protection against unintended lapse.” I understand that I have the right to designate at least one person other than myself to receive notice of cancellation of this long-term care insurance policy for nonpayment of premium. I understand that notice to my designee will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate any person to receive such notice.”

The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

(2) Cancellation for nonpayment of premium. No individual long-term care policy or certificate can be canceled for nonpayment of premium unless the insurer, at least 10 days before the effective date of the cancellation, has given notice to the person(s) designated pursuant to Subsection (1) of this section, at the address provided by the insured for purposes of receiving notice of cancellation. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

H. Reinstatement. In addition to the requirements in Subsection G of this section, a long-term care policy or certificate shall include a provision which provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof of cognitive impairment. This option shall be available for a period of no less than five months after termination and shall allow for the collection of past due premium.


A. Renewability. Individual long-term care insurance policies shall contain a renewability provision. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, when limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision may not apply to policies which do not contain a renewability provision, and under which the right to non renewal is reserved solely to the policyholder.

B. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a commensurate increase in premium during the policy term must be agreed to in writing signed by the insured.
except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, this premium charge shall be set forth in the policy, rider, or endorsement.

C. Payment of Benefits. A long-term care insurance policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

D. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to pre-existing conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

E. Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in 31A-22-1407 shall set forth a description of these limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

F. Disclosure of Tax Consequences. With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.


A. All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B. (1) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, the applicant must also ask the applicant to list the medication that has been prescribed.

(2) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

C. Except for policies or certificates which are guaranteed issue:

(1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, (company) may have the right to deny benefits or rescind your policy.

(2) the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)

(3) prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

(a) a report of a physical examination;
(b) an assessment of functional capacity;
(c) an attending physician's statement; or
(d) copies of medical records.

D. A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rejections, both state and country-wide, except those which the insured voluntarily effectuated and shall annually furnish this information to the Insurance Commissioner in the format currently prescribed by the National Association of Insurance Commissioners.


A. A long-term care insurance policy or certificate may not, if it provides benefits for home health care services, limit or exclude benefits:

(1) by requiring that the insured/claimant would need care in a skilled nursing facility if home health care services were not provided;

(2) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(3) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of the aide or worker's licensure or certification;

(4) by requiring that the insured/claimant have an acute condition before home health care services are covered; or

(5) by limiting benefits to services provided by Medicare-certified agencies or providers.

B. Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

C. A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.


A. No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered...
by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

1. Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5%.
2. Guarantees the insured individual the right to periodically increase benefit levels without proving evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit may be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made, or
3. Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

B. Where the policy is issued to a group, except a continuing care retirement community center, the required offer in Subsection A above shall be made to the policyholder and to each proposed certificate holder.

C. The offer in Subsection A above may not be required of life insurance policies or riders containing accelerated long-term care benefits.

D. Insurers shall include the following information in or with the outline of coverage:

1. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20 year period.
2. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.
3. Inflation protection benefit increases under a policy which contains this benefit shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.
4. An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

G. (1) Inflation protection as provided in Subsection A(1) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

2. The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (indicate), and I reject inflation protection.


A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing these questions may be used. With regard to a replacement policy issued to a group, other than employee and labor union groups, the following questions may be modified only the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided, however, that the certificate holder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?
2. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?
   a. If so, with which company?
   b. If that policy lapsed, when did it lapse?
   c. Are you covered by Medicaid?
   d. Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?

B. Agents shall list any other health insurance policies they have sold to the applicant.

1. List policies sold which are still in force.
2. List policies sold in the past 5 years which are no longer in force.

C. Solicitations. Other than Direct Response. Upon determining that a sale will involve replacement, an insurer other than an insurer using direct response solicitation methods, or its agent, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

TABLE 1

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

<table>
<thead>
<tr>
<th>Insurer’s company name and address</th>
</tr>
</thead>
</table>

SIGNED THIS NOTICE -- IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to your application, information you have furnished, you intend to lapse or otherwise terminate existing accident and sickness or long term care insurance and replace it with an individual long-term care insurance policy to be issued by (company name) Insurance Company. Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT (BROKER OR OTHER REPRESENTATIVE):

[Place additional space, as necessary]

I have reviewed your current medical or health insurance coverage.

I believe the replacement of insurance involved in this transaction materially improves your position. My advice has been taken into account the following considerations, which I call to your attention:

1. Health condition which you may presently have (existing conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits.

NOTICES OF PROPOSED RULES

Under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain any preexisting conditions or preexisting periods. The insurer will waive any time periods applicable to preexisting conditions or preexisting periods in the new policy for coverage of similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or the agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after the consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claim and to refund your premium, although your policy has never been in force. After the application has been completed and before you sign it, read it carefully to be certain that all information has been properly recorded.

(Signature of Agent, Broker or Other Representative)

(Typed Name and Address of Agent or Broker)

The above ‘Notice to Applicant’ was delivered to me on:

(Date)

(Applicant’s Signature)

D. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

TABLE II

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

(Insurance company’s name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to your application, (information you have furnished), you intend to terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herein issued by (company name) Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care insurance is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain any preexisting conditions or preexisting periods. Your insurer will waive any time periods applicable to preexisting conditions or preexisting periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or insurer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. Be included only if the application is attached to the policy. If, after the consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be certain that all questions are answered fully and correctly. Questions or site elements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to company name and address within 30 days if any information is not correct and complete, or if any part medical history has been left out of the application.

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. The notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

R590-148-12 Utah Insurance Department Reporting Requirements

A. Every insurer shall maintain records for each agent of that agent’s amount of replacement sales as a percent of the agent’s total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent’s total annual sales.

B. Each insurer shall report annually, by June 30, the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection A above.

C. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

D. Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

E. Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

F. For purposes of this section, “policy” shall mean only long-term care insurance and “report” means on a statewide basis.

R590-148-13 Discretionary Powers of Commissioner

The commissioner may upon written request and after an administrative hearing, issue an order to modify, suspend or rescind any provision of regulations of this rule with respect to a specific long-term care insurance policy or certificate upon a written finding that:

A. the modification or suspension would be in the best interest of the insureds; and

B. the purposes to be achieved could not be effectively or efficiently accomplished without the modification or suspension; and

C. one of the following occurs:

1. the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

(2) the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or
(3) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

A. When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with 31A-17-504(7). Claim reserves must also be established when the policy or rider is in claim status.
Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event may the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.
In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:
(1) definition of insured events;
(2) covered long-term care facilities;
(3) existence of home convalescence care coverage;
(4) definition of facilities;
(5) existence or absence of barriers to eligibility;
(6) premium waiver provision;
(7) renewability;
(8) ability to raise premiums;
(9) marketing method;
(10) underwriting procedures;
(11) claims adjustment procedures;
(12) waiting period;
(13) maximum benefit;
(14) availability of eligible facilities;
(15) margins in claim costs;
(16) optional nature of benefit;
(17) delay in eligibility for benefit;
(18) inflation protection provisions; and
(19) guaranteed insurability option.
Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.
B. When long-term care benefits are provided other than as in Subsection A above, reserves shall be determined in accordance with 31A-17-402(2)(b).

Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:
A. Statistical credibility of incurred claims experience and earned premiums;
B. the period for which rates are computed to provide coverage;
C. experienced and projected trends;
D. concentration of experience within early policy duration;
E. expected claim fluctuation;
F. experience refunds, adjustments or dividends;
G. renewability features;
H. all appropriate expense factors;
I. interest;
J. experimental nature of the coverage;
K. policy reserves;
L. mix of business by risk classification; and
M. product features such as long elimination periods, high deductibles and high maximum limits.

Every insurer, health care service plan or other entity providing long-term care insurance or benefits in Utah shall provide a copy of any long-term care insurance advertisement intended for use in Utah whether through written, radio or television medium to the Commissioner of Insurance of this state. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

A. Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:
(1) establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;
(2) establish marketing procedures to assure excessive insurance is not sold or issued;
(3) display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance;
(5) every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this Subsection A.
(6) if the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificate holder that the program is available and the name, address and telephone number of the program.
B. In addition to the practices prohibited in Section 31A-21-301, et seq., the following acts and practices are prohibited:
(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or to recommend the purchase of insurance.

(3) Cold call advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.


In recommending the purchase or replacement of any long-term care insurance policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.


If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.


This section of the rule implements, interprets and prescribes a standard format of an outline of coverage for the provisions in 31A-22-1409(2).

A. The outline of coverage shall be a free-standing document, using no smaller than ten point type.

B. The outline of coverage may contain no material of an advertising nature.

C. Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence—equivalent to capitalization—or underlining.

D. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

E. Format for outline of coverage;

<table>
<thead>
<tr>
<th>TABLE 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>(COMPANY NAME)</td>
</tr>
<tr>
<td>(ADDRESS - CITY AND STATE)</td>
</tr>
<tr>
<td>(TELEPHONE NUMBER)</td>
</tr>
</tbody>
</table>

LONG TERM CARE INSURANCE

OUTLINE OF COVERAGE

| (Policy Number or Group Matter Policy and Certificate Number) |
| (Except for policies or certificates which are guaranteed issue, the following section statement, or language substantially similar, must appear as follow in the outline of coverage.) |

Section: The issuance of this long-term care insurance (policy) certificate is based upon your response to the questions on your application. A copy of your (application) (endorsement form) (is enclosed) (was retained by you when you applied). If you answered no to a question on your application, you may be denied coverage, or your premium rates may be increased. If your answers were incorrect or unclear, the company may have the right to deny benefits or cancel your policy. The least time to cancel is 30 days from the date of the policy. The least time to renew is 30 days from the date of the policy. If the least time to cancel is for a policy or a portion of the policy, the least time to renew is for the entire policy. If the least time to renew is for a policy or a portion of the policy, the least time to cancel is for the entire policy. In any event, you should consult a lawyer and your insurance company if you are not sure of your rights.

3. PROVIDE THE POLICYholders a copy of the policy. You should provide the policyholders with a copy of the policy that includes the following:

a. A brief description of the policy.

b. A description of the benefits included in the policy.

c. A description of the limitations and exclusions.

d. A description of the premium rates and how they are determined.

4. PROVIDE THE POLICYholders a copy of the application. The application should include the following:

a. A description of the policy.

b. A description of the benefits included in the policy.

c. A description of the limitations and exclusions.

d. A description of the premium rates and how they are determined.

5. PROVIDE THE POLICYholders a copy of the certificate. The certificate should include the following:

a. A description of the policy.

b. A description of the benefits included in the policy.

c. A description of the limitations and exclusions.

d. A description of the premium rates and how they are determined.

6. PROVIDE THE POLICYholders a copy of the endorsement. The endorsement should include the following:

a. A description of the policy.

b. A description of the benefits included in the policy.

c. A description of the limitations and exclusions.

7. PROVIDE THE POLICYholders a copy of the rider. The rider should include the following:

a. A description of the policy.

b. A description of the benefits included in the policy.

c. A description of the limitations and exclusions.

8. PROVIDE THE POLICYholders a copy of the policyholder information sheet. The policyholder information sheet should include the following:

a. A description of the policy.

b. A description of the benefits included in the policy.

c. A description of the limitations and exclusions.

d. A description of the premium rates and how they are determined.

(1) For the purpose of this rule, the terms "applicant," "long-term care insurance," "certificate," "commissioner," and "policy" shall have the meanings set forth in Sections 31A-1-301 and 31A-22-1402.

(2) In addition, the following definitions apply:

(a) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(b) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.

(c) "Adult day care" means a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or disabled adults who can benefit from care in a group setting outside the home.

(d) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(e) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(f) "Continence" means the ability to maintain control of bowel and bladder function; or when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(g)(i) "Chronically ill individual" has the meaning prescribed for this term by section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(A) Being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets these requirements.

(h) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(i) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup or table, or by a feeding tube or intravenously.

(ii) "Exceptional increase" means only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified:

(A) due to changes in laws and rules applicable to long-term care coverage in this state; or

(B) due to increased and unexpected utilization that affects the majority of insurers of similar products.

(ii) Except as provided in Section R590-148-24, exceptional increases are subject to the same requirements as other premium rate schedule increases.

(iii) The commissioner may request review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(iv) The commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(k) "Hands-on assistance" means physical assistance, minimal, moderate or maximal, without which the individual would not be able to perform the activity of daily living.

(l) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(m) "Incidental" means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(n) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(o) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual, including the protection from threats to health and safety due to severe cognitive impairment.

(p) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(q) "Mental or nervous disorder" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(r) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living, for example bathing, eating, dressing, transferring and toileting.

(s) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(t) "Qualified long-term care services" means services that meet the requirements of Section 7702B(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(u) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows:

(I) institutional long-term care benefits only;

(ii) non-institutional long-term care benefits only; or

(iii) comprehensive long-term care benefits.

(v) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(w) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(x) "Transferring" means moving into or out of a bed, chair or wheelchair.
(3) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.


(1) Renewability

The terms "guaranteed renewable" and "noncancellable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Subsection R590-148-6(1)(b).

(a) No policy issued to an individual may contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(i) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(ii) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(b) Individual long-term care insurance policies shall contain a renewal provision. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, when limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision may not apply to policies which do not contain a renewability provision, and under which the right to non-renew is reserved solely to the policyholder.

(c) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(2) Limitations and Exclusions.

(a) No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(i) preexisting conditions or diseases;
(ii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease, or any other mental or nervous disorder of organic origin;
(iii) alcoholism and drug addiction;
(iv) illness, treatment or medical condition arising out of:
   (A) war or act of war, whether declared or undeclared;
   (B) participation in a felony, riot or insurrection;
   (C) service in the armed forces or auxiliary units;
   (D) suicide, sane or insane, attempted suicide or intentionally self-inflicted injury; or
   (E) aviation for non-fare-paying passengers;
(v) treatment provided in a government facility, unless otherwise required by law;
(vi) services for which benefits are paid under:
   (A) Medicare or other governmental program, except Medicaid;
   (B) any state or federal workers' compensation;
   (C) employer's liability or occupational disease law; or
   (D) any motor vehicle no-fault law;
(vii) services provided by a member of the covered person's immediate family;
(viii) services for which no charge is normally made in the absence of insurance;
(ix) benefits provided for a level of care cannot be conditioned on a requirement that the care be in a facility licensed for higher levels of care.

(b) Subsection R590-148-6(2)(a) is not intended to prohibit exclusions and limitations by type of provider or territorial limitations outside the United States.

(3) Preexisting Condition Limitation. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(4) Benefit Triggers. Activities of daily living and cognitive impairment may be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

(5) Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(6) Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and
(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(7) Premiums.

(a) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(b) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(c) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section R590-148-14, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.
(d) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under Section R590-148-14, the initial annual premium shall be based on the reduced benefits.

(8) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, this premium charge shall be set forth in the policy, rider or endorsement.

(9) Payment of Benefits. A long-term care insurance policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(10) Eligibility for Benefits Limitations and Conditions. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Section 31A-22-1407 shall set forth a description of these limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(11) Disclosure of Tax Consequences. With regard to life insurance policies which provide for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the benefit payment request is submitted that receipt of these benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

(12) Qualified Contracts. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(13) Nonqualified Contracts. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is not intended to be a qualified long-term care insurance contract.

(14) Long-term care insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities shall be in the form of a separate rider complying with all provisions of this Rule. Long-term care insurance shall not be incorporated into a life insurance policy or annuity contract.


(1) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care services, limit or exclude benefits:

(a) by requiring that the insured would need care in a skilled nursing facility if home health care services were not provided;

(b) by requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health care services are covered;

(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of the aid or worker's licensure or certification;

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required for the eligible service;

(g) by requiring that the insured have an acute condition before home health care services are covered;

(h) by limiting benefits to services provided by Medicare-certified agencies or providers;

(i) by excluding coverage for adult day care services.

(2) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

(3) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.


(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than 3 of the activities of daily living or the presence of cognitive impairment.

(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-148-5(2)(a) as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections R590-148-8(1) and (2).
(4) For purposes of this section the determination of a deficiency shall not be more restrictive than:
   (a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
   (b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(7) The requirements set forth in this section shall be effective July 1, 2002 and shall apply as follows:
   (a) Except as provided in Subsection R590-148-8(7)(b), the provisions of this section apply to a long-term care policy issued in this state on or after January 1, 2002.
   (b) For certificates issued on or after January 1, 2002, under a group long-term care insurance policy that was in force at the time this rule became effective, the provisions of this section shall not apply.


(1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(3) Certification regarding activities of daily living and cognitive impairment required pursuant to Subsection R590-148-9(2) shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

(4) Certification required pursuant to Subsection R590-148-9(2) may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(5) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.


(1) Group long-term care insurance issued in this state on or after January 1, 2002 shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this section:
   (a) "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers, facilities, or both, may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.
   (b) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.
   (c) "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers, facilities, or both, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.
   (d) a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(3) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(4) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(5) The premium for the individual converted policy shall not exceed the insurer's customary rate at the time of the termination, which is applicable to the form and amount of the individual policy, and to the class of risk to which the person belonged when terminated from the group policy.

(6) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:
   (a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-148-10(4).

(7) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. This provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(8) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(9) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.


Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintentional lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(b) The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

(c) When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan the requirements contained in Subsection R590-148-11(1)(a) need not be met until 60 days after the policyholder or certificateholder is no longer on a payroll or pension deduction plan.

(2) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-148-11(1)(a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirement in Subsection R590-148-11(1)(a), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.


(1) All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) All applications shall clearly indicate the payment plan selected by the applicant.

(4) Except for policies or certificates which are guaranteed issue:

(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, (company) may have the right to deny benefits or rescind your policy.

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now.

74

before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)

(5) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:
   (a) a report of a physical examination;
   (b) an assessment of functional capacity;
   (c) an attending physician’s statement; or
   (d) copies of medical records.

(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(7) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing these questions may be used. With regard to a replacement policy issued to a group, other than employee and labor union groups, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.

   (a) Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?
   (b) Did you have another long-term care insurance policy or certificate in force during the last 12 months?
      (i) If so, with which company?
      (ii) If that policy lapsed, when did it lapse?
      (c) Are you covered by Medicaid?
   (d) Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?

(8) Agents shall list any other health insurance policies they have sold to the applicant.

   (a) List policies sold which are still in force.
   (b) List policies sold in the past five years which are no longer in force.

(9) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner detailed in Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(10) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the manner detailed in Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(11) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. The notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(12) Life insurance policies and certificates that provide benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of R590-93 Replacement of Life Insurance and Annuities. If a life insurance policy that provide benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(13) Electronic Enrollment for Group Policies:

   (a) In the case of a group policy, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:
      (i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;
      (ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and
      (iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the confidentiality of individually identifiable information and "privileged information" as defined by the Utah Government Records Access and Management Act, Section 63-2-101, is maintained.

   (b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer’s ability to confirm enrollment and coverage amounts.


(1) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

   (a) increases benefit levels annually at a rate not less than $5;
   (b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The premium rate for the additional benefit shall not exceed the insurer's customary rate at the time the offer is made, which is applicable to the form and amount of the policy, the class of risk to which the person belonged at the time of issue of the policy, and to the age attained on the effective date of the increase. The amount of the additional benefit may be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or
(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, except a continuing care retirement community center, the required offer in Subsection R590-148-13(1) shall be made to the group policyholder and to each proposed certificateholder.

(3) Insurers shall include the following information in or with the outline of coverage:

(a) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20 year period; and

(b) any expected premium increase or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy which contains this benefit shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(5) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection as provided in Subsection R590-148-13(1)(a) shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (indicate), and I reject inflation protection.


(1) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-1412:

(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-148-14(4); and

(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

(2) If the offer required to be made under Section 31A-22-1412 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

(3)(a) After rejection of the offer required under Section 31A-22-1412, for individual and group policies without nonforfeiture benefits issued after January 1, 2002, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in Table III. Triggers for a Substantial Premium Increase, based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

(d) On or before the effective date of a substantial premium increase as defined in Subsection R590-148-14(3)(c), the insurer shall:

(i) offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a reduced benefit period in accordance with the terms of Subsection R590-148-14(4). This option may be elected at any time during the 120-day period referenced in Subsection R590-148-14(3)(c); and

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection R590-148-14(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-148-14(3)(d)(ii).

(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection:

(a) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases with age at least 1% per year prior to age 50, and at least 3% per year beyond age 50.

(b) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits, amounts and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-148-14(4)(c).

(c) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-148-14(5).

(d)(i) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(ii) Notwithstanding Subsection R590-148-14(4)(d)(i), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(A) the end of the tenth year following the policy or certificate issue date; or

(B) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.
(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would payable if the policy or certificate had remained in premium paying status.

(6) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

(7) The requirements set forth in this section shall become effective July 1, 2002 and shall apply as follows:
(a) Except as provided in Subsection R590-148-14(7)(b), the provisions of this section apply to any long-term care insurance policy issued in this state on or after January 1, 2002.
(b) For certificates issued on or after January 1, 2002, under a group long-term care insurance policy which policy was in force at the time this rule became effective, the provisions of this section shall not apply.

(8) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section R590-148-21 treating the policy as a whole.

(9) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-148-14(3)(c), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(10) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:
(a) the nonforfeiture provision shall be appropriately captioned;
(b) the nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and
(c) the nonforfeiture provision shall provide at least one of the following:
(i) reduced paid-up insurance;
(ii) extended term insurance;
(iii) shortened benefit period; or
(iv) other similar offerings approved by the commissioner.

This section of the rule implements, interprets and prescribes a standard format of an outline of coverage for the provisions in Subsection 31A-22-1409(2).
(1) The outline of coverage shall be a free-standing document, using no smaller than ten point type.
(2) The outline of coverage may contain no material of an advertising nature.
(3) Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.
(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) The format for outline of coverage can be found in Table IV, Long-Term Care Insurance Outline of Coverage.

(1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.
(a) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.
(b) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.
(2) Life insurance policies or riders that provide long-term care benefits are not required to furnish the above-referenced guide if the long-term care benefits are incidental, but shall furnish the policy summary required under Subsection 31A-22-1409(8).

(1) Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to Section 31A-22-1403, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.
(2)(a) Every insurer shall provide a copy of any long-term care insurance advertisement intended for use in Utah whether through written, radio or television medium to the insurance commissioner of this state.
(b) All advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.
(c) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

(1) Every insurer shall:
(a) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
(b) train its agents in the use of its suitability standards; and
(c) maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.
(2)(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:
(i) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
(ii) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
(iii) the values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.
(b) The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Subsection R590-148-18(2)(a). The efforts shall include presentation.
to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12 point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the commissioner.

(c) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

(3) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(4) Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(5) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C in not less than 12 point type.

(6) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer may reject the application. In the alternative, the insurer shall send the applicant a letter similar to Appendix D, Long-Term Care Insurance Suitability Letter. However, if the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(7) If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.


(1) Every insurer shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(d) Provide copies of the disclosure forms required in Subsection R590-148-20(2) to the applicant. See Appendix B, Long-Term Care Insurance Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form.

(e) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

(f) Every insurer or entity marketing long-term care insurance shall establish audit able procedures for verifying compliance with this Subsection R590-148-19(1).

(g) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that the program is available and the name, address and telephone number of the program.

(h) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsections R590-148-6(1)(a)(ii) and R590-148-6(6)(a).

(i) Provide an explanation of contingent benefit upon lapse provided for in Subsection R590-148-14(3)(c).

(2) In addition to the practices prohibited in Part 3, Chapter 23 of Title 31A, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.


(1) This section shall apply as follows:

(a) Except as provided in Subsection R590-148-20(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2002.

(b) For certificates issued on or after January 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following July 1, 2002.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future:
(b) an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

(c) the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) a general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e.g., next anniversary date, next billing date, etc.; and

(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-148-20(2)(b) if the premium rate or rate schedule is changed.

(e) (i) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:

(A) the policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount, percent, and date of implementation for each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(iv) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of January 1, 2002, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-148-20(2)(e)(i).

(v) If the acquiring insurer in Subsection R590-148-20(2)(e)(iv) files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-148-20(2)(e)(iv), the acquiring insurer shall make all disclosures required by Subsection R590-148-20(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-148-20(2)(e)(iv).

(3) An applicant shall sign an acknowledgment at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsections R590-148-20(2)(a) and (e). If due to the method of application the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the forms in Appendix B, Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form, to comply with the requirements of Subsections R590-148-20(1) and (2).

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-148-20(2) when the rate increase is implemented.


(1) This section shall apply to all individual long-term care insurance except those covered in Sections R590-148-22 and R590-148-24.

(2) Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk.

(3) In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(a) statistical credibility of incurred claims experience and earned premiums;

(b) the period for which rates are computed to provide coverage;

(c) experienced and projected trends;

(d) concentration of experience within early policy duration;

(e) expected claim fluctuation;

(f) experience refunds, adjustments or dividends;

(g) renewability features;

(h) all appropriate expense factors;

(i) interest;

(j) experimental nature of the coverage;

(k) policy reserves;

(l) mix of business by risk classification; and

(m) product features such as long elimination periods, high deductibles and high maximum limits.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.


(1) This section shall apply as follows:

(a) except as provided in Subsection R590-148-22(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2002.

(b) for certificates issued on or after January 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following July 1, 2002.

(2) An insurer shall file the information listed in this subsection to the commissioner prior to making a long-term care insurance form available for sale:

(a) a copy of the disclosure documents required in Section R590-148-20; and

(b) an actuarial certification consisting of at least the following:

(i) a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(ii) a statement that the policy design and coverage provided have been reviewed and taken into consideration;
(iii) a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(iv) a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(A) sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(B) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(C) a statement that the net valuation premium for renewal years does not increase, except for attained-age rating where permitted; and

(D) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

(I) an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and

(II) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under Subsection R590-148-22(3) based on a standard age distribution;

(V) (A) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(B) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.


(1) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with Subsection 31A-17-504(7). Claim reserves must also be established when the policy or rider is in claim status.

Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event may the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

(a) definition of insured events;

(b) covered long-term care facilities;

(c) existence of home convalescence care coverage;

(d) definition of facilities;

(e) existence or absence of barriers to eligibility;

(f) premium waiver provision;

(g) renewability;

(h) ability to raise premiums;

(i) marketing method;

(j) underwriting procedures;

(k) claims adjustment procedures;

(l) waiting period;

(m) maximum benefit

(n) availability of eligible facilities;

(o) margins in claim costs;

(p) optional nature of benefit;

(q) delay in eligibility for benefit;

(r) inflation protection provisions; and

(s) guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) When long-term care benefits are provided other than as in Subsection R590-148-23(1), reserves shall be determined in accordance with 31A-17-402(2)(b).


(1) This section shall apply as follows:

(a) except as provided in Subsection R590-148-24(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2002;

(b) for certificates issued on or after January 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following July 1, 2002.

(2) An insurer shall file notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner prior to the notice to the policyholders and shall include:

(a) information required by Section R590-148-20;

(b) certification by a qualified actuary that:

(i) if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

(ii) the premium rate filing is in compliance with the provisions of this section;

(c) an actuarial memorandum justifying the rate schedule change request that includes:

(i) lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(A) annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(B) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(C) the projections shall demonstrate compliance with
Subsection R590-148-24(3) and
(D) for exceptional increases:

(I) the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) in the event the commissioner determines as provided in Section R590-148-5(2)(j)(iv) that offsets may exist, the insurer shall use appropriate net projected experience;

(ii) disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(iv) a statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(v) in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

(d) a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) sufficient information for review of the premium rate schedule increase by the commissioner.

(3) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) exceptional increases shall provide that at least 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) the accumulated value of the initial earned premium times 58%;

(ii) 85% percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) the present value of future projected initial earned premiums times 58%;

(iv) 85% percent of the present value of future projected premiums not in Subsection R590-148-24(3)(b)(iii) on an earned basis;

(c) in the event that a policy form has both exceptional and other increases, the values in Subsections R590-148-24(8)(a) and (iv) will also include 70% for exceptional rate increase amounts; and

(d) all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves which is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the health insurance contract.

(4) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in Subsection R590-148-24(3)c(i), annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection R590-148-24(11), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(5) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection R590-148-24(3)(c)(ii), shall be filed for review by the commissioner every five years following the end of the required period in Subsection R590-148-24(4). For group insurance policies that meet the conditions in Subsection R590-148-24(11), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(6)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Section R590-148-24(3), the commissioner may require the insurer to implement any of the following:

(i) premium rate schedule adjustments; or

(ii) other measures to reduce the difference between the projected and actual experience,

(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection R590-148-24(2)(c)(v), if applicable.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in Subsection R590-148-24(8); and

(b) the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Subsection R590-148-24(3) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in Subsection R590-148-24(3)(a)(i) and (ii).

(8) (a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapse has occurred or is anticipated:

(i) the rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) the rate increase is not an exceptional increase; and

(iii) the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapse has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer.
or its affiliates.

(i) The offer shall:

(A) be subject to the approval of the commissioner;

(B) be based on actuarially sound principles, but not be based on attained age; and

(C) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy;

(ii) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(A) the maximum rate increase determined based on the combined experience; and

(B) the maximum rate increase determined based on the experience of the insureds originally issued the form plus 10%.

(9) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of Subsection R590-148-20(8), prohibit the insurer from either of the following:

(a) filing and marketing comparable coverage for a period of up to five years; or

(b) offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Subsections R590-148-24(1) through (9) shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in Subsection R590-148-5(2)(m), if the policy complies with all of the following provisions:

(a) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

(i) Section 31A-22-408; and

(ii) Section 31A-22-409;

(c) the policy meets the disclosure requirements of Subsections 31A-22-1409(7) and (8) and 31A-22-1410;

(d) the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

(i) policy illustrations as required by R590-177; and

(ii) disclosure requirements in R590-133;

(e) an actuarial memorandum is filed with the insurance department that includes:

(i) a description of the basis on which the long-term care rates were determined;

(ii) a description of the basis for the reserves;

(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) a description and a table of each actuarial assumption used.

For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(11) Subsections R590-148-24(6) and (8) shall not apply to group insurance policies where:

(a) the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) the policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

R590-148.25. Reporting Requirements.

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(a) Every insurer shall report the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-148-25(1).

(b) Every insurer shall report the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(c) Every insurer shall report the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(d) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely, agent activities regarding the sale of long-term care insurance.

(2) Every insurer shall report, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. The report used by the insurer shall contain, at a minimum, the information in the format contained in Appendix E, Claims Denial Reporting Form Long-Term Care Insurance, in not less than 12 point type.

(3) Every insurer shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually report this information in the format currently prescribed by the National Association of Insurance Commissioners.

(4) Every insurer shall report the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

(5) For purposes of this section:

(a) "policy" shall mean only long-term care insurance;
(b) "claim" means a request for payment of benefits under an in
force policy regardless of whether the benefit claimed is covered
under the policy or any terms or conditions of the policy have been
met;
  
  (c) "denied" means that the insurer refuses to pay a claim for
any reason other than for claims not paid for failure to meet the
waiting period or because of an applicable preexisting condition; and
  
  (d) "report" means on a statewide basis.

(6) Reports required under this section shall be filed with the
commissioner annually on or before June 30.


A producer is not authorized to sell, solicit or negotiate with
respect to long-term care insurance except as authorized by Chapter
23 of Title 31A.


The commissioner may upon written request and after an
administrative hearing, issue an order to modify or suspend a
specific provision or provisions of this rule with respect to a specific
long-term care insurance policy or certificate upon a written finding
that:

  (1) the modification or suspension would be in the best interest
of the insured; and
  
  (2) the purposes to be achieved could not be effectively or
efficiently achieved without the modification or suspension; and

  (3) one of the following occur:

  (a) the modification or suspension is necessary to the
development of an innovative and reasonable approach for insuring
long-term care;
  
  (b) the policy or certificate is to be issued to residents of a life
care or continuing care retirement community or some other
residential community for the elderly and the modification or
suspension is reasonably related to the special needs or nature of the
community; or
  
  (c) the modification or suspension is necessary to permit
long-term care insurance to be sold as part of, or in conjunction
with, another insurance product.


In addition to any other penalties provided by the laws of this
state any insurer and any agent found to have violated any
requirement of this state relating to the rule of long-term care
insurance or the marketing of this insurance shall be subject to a fine
of up to three times the amount of any commissions paid for each
policy involved in the violation or up to $10,000, whichever is
greater.

R590-148-29. Enforcement Date.

The department will enforce all sections of the rule not already
including a compliance date 45 days from the date the rule takes
effect.


If any provision or clause of this rule or its application to any
person or situation is held invalid, such invalidity may not affect any
other provision or application of this rule which can be given effect
without the invalid provision or application, and to this and the
provisions of this rule are declared to be severable.

KEY: insurance
2002
31A-2-201
31A-22-1404

Natural Resources; Forestry, Fire and
State Lands
R652-140
Utah Forest Practices Act

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 24251
FILED: 11/15/2001, 15:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The
proposed rule clarifies the procedures through which operators must register with the division pursuant to Section
65A-8a-103. The proposed rule clarifies the procedures through which operators must notify the division of their intent
to conduct forest practices pursuant to Section 65A-8a-104.

SUMMARY OF THE RULE OR CHANGE: The proposed rule provides
exceptions to forest practices which excludes the control of invasive or exotic species, removal of Pinyon-Juniper
woodlands, or cutting trees for posts, poles, or firewood. The proposed rule establishes the procedures operators must
follow to become registered operators in the state and establishes the procedures operators must follow to notify the
division of their intent to conduct forest practices. The procedures allow for hand delivery, mail delivery, and
electronic submission of registration and notification forms.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS
RULE: Sections 65A-8a-103 and 65A-8a-104

ANTICIPATED COST OR SAVINGS TO:

* THE STATE BUDGET: The Division anticipates minimal cost
associated with the administration of the rule. Any costs
incurred will be absorbed in the Division’s current budget. No
additional employees are needed to handle the increased
workload associated with the proposed rule.

* LOCAL GOVERNMENTS: The proposed rule does not apply to local
government.

* OTHER PERSONS: The aggregate cost to operators should be
less than $1,000 per year, depending on the number of
operators and the frequency of notifications. The proposed
rule requires operators to register with the division every two
years. At the end of the two-year period, operators must
renew their registration with the division. The proposed rule
also requires operators to notify the division of their intent to
conduct forest practices. Costs will vary depending on the
method operators choose to register and the frequency of
notification of intent to conduct forest practices. Operators
have the option of mailing, hand delivering, or e-mailing their
registrations and notifications to the division.

83
COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost to individual operators is primarily associated with the time it takes to fill-out and submit the forms. The division estimates this cost to be less than $50 per year. Costs will vary depending on the method operators choose to register and/or notify the division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses results far more from the statute than this rule. The division is attempting to minimize the cost with the two-year registration validity, and making available to operators several methods to register and notify the division.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
Room 3520
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Karl Kappe at the above address, by phone at 801-538-5495, by FAX at 801-533-4111, or by Internet E-mail at kkappe.nrs0f@state.ut.us

INTERESTED PARTIES MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/18/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 01/19/2002

AUTHORIZED BY: Karl Kappe, FFSL Strategic Planner


R652-140-100. Authority and Purpose.

This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8a-101 et seq., to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices.

R652-140-200. Exceptions to Forest Practice.

For purposes of Section 65A-8a-101 et seq., and this rule, the term "Forest practice" does not include the control of invasive or exotic species, removal of Pinyon-Juniper woodlands, or cutting trees for posts, poles or firewood.


(1) To register, operators shall complete and submit a printed or electronic version of a registration form provided by the Division, which includes information required under Subsection 65A-8a-103(2).

(2) The registration form shall be submitted to the Division's headquarter office or one of the Division's six administrative area offices. Offices are located in the following areas:

(a) Headquarter Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703,
(b) Bear River Area Office, 1780 North Research Parkway, Suite 104, North Logan, UT 84341-1940;
(c) Wasatch Front Area Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.
(d) Central Area Office, 115 East 900 North, Richfield, UT 84701,
(e) Northeastern Area Office, 152 East 100 North, Vernal, UT 84078.
(f) Southwestern Area Office, 585 North Main Street, Cedar City, UT 84720.
(g) Southeastern Area Office, 1165 South Highway 191, Suite 6, Moab, UT 84532.

(3) Upon receipt of the registration form, the Division will acknowledge receipt by providing the operator a registration number and date of expiration and returning a copy of the registration form to the operator.

(4) Registration shall be valid for a period of two years from the date of receipt. At the end of the two-year period, the operator must renew the registration with the Division.


(1) At least 30 days prior to the commencement of a forest practice, the operator shall submit written notification of intent to conduct forest practices to the Division as required by Subsection 65A-8a-104(1). The 30 days shall commence on the date of postmark, if mailed, or on the date received if hand delivered or electronically submitted.

(2) Notifications shall be submitted to the Division's headquarter office or one of the Division's six administrative area offices listed in Subsection R652-140-300(2).

(3) Operators shall submit a written notification on a form provided by the Division, a copy thereof or its electronic version, and include the information required under Subsection 65A-8a-104(2).

(4) Notifications submitted to the Division shall be acknowledged within ten days of receipt by the Division. The acknowledgement shall include information identified in Subsection 65A-8a-104(3).

KEY: registration, notification, forest practices

2002
65A-8a-103
65A-8a-104

Natural Resources, Water Resources

R653-2

Financial Assistance from the Board of Water Resources

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24238
FILED: 11/15/2001, 10:13
RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board of Water Resources wants to streamline the application and investigation process and to require certain water conservation measures as a condition of funding. The proposed changes also consist of grammar changes.

SUMMARY OF THE RULE OR CHANGE: The changes streamline the application and investigation process. As a condition of funding, the Board will require the following water conservation measures in addition to the preparation of a Water Management and Conservation Plan: adoption of an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m., and the adoption of a progressive water rate schedule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-10-1

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: None--the Division of Water Resources has prepared a time-of-day watering model ordinance that is available for sponsors of municipal projects. The Division staff will assist sponsors in establishing water rates schedules as part of the project investigation process costs.
- LOCAL GOVERNMENTS: None--the Division of Water Resources has prepared a time-of-day watering model ordinance that is available for sponsors of municipal projects. The Division staff will assist sponsors in establishing water rates schedules as part of the project investigation process costs.
- OTHER PERSONS: None--the Division of Water Resources has prepared a time-of-day watering model ordinance that is available for sponsors of municipal projects. The Division staff will assist sponsors in establishing water rates schedules as part of the project investigation process costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--the Division of Water Resources has prepared a time-of-day watering model ordinance that is available for sponsors of municipal projects. The Division staff will assist sponsors in establishing water rates schedules as part of the project investigation process costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Natural Resources is in agreement with this rule and recognizes that business will incur some costs for development and implementation of conservation plans and ordinances but will see cost savings from water conservation.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
- NATURAL RESOURCES
  WATER RESOURCES
  Room 310
  1594 W NORTH TEMPLE
  SALT LAKE CITY UT 84116-3154, or
  at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nfullmer.nwrres@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 01/02/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 01/03/2002

AUTHORIZED BY: Larry Anderson, Director

R653. Natural Resources, Water Resources.
R653-2. Financial Assistance from the Board of Water Resources.
R653-2-1. Purpose.
The purpose of this rule is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state.

R653-2-2. Description of Funding Program.
(1)(a) The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.
(b) The Board will fund projects based on the following prioritization system:
(i) Projects which involve public health problems, safety problems, or emergencies.
(ii) Municipal water projects that are required to meet an existing or impending need.
(iii) Agricultural water projects that provide a significant economic benefit for the local area.
(iv) Projects which will receive a large portion of their funding from other sources.
(v) Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first come first served basis.

NOTICES OF PROPOSED RULES

(A) Irrigation projects costing less than $500,000.
(B) Rural culinary projects costing less than $250,000 that involve mutual irrigation and water companies.
(C) Dam Safety Studies
   (i) The staff will recommend repayment terms in the feasibility report it will prepare. Interest will not be charged.
   (b) Cities Water Loan Fund (CWL)
      (i) The board can provide loans through the CWL for the construction of facilities. Through the CWL, the Board may finance the construction of municipal water facilities for political subdivisions of the state such as cities, towns, and districts.
      (ii) The staff will recommend repayment terms and interest rates in the feasibility report.
      (c) Conservation and Development Fund (CDF)
         (i) Through the CDF, the board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, [another state, the] federal government, or Indian tribes.
         (ii) The staff will recommend repayment terms and interest rates in the feasibility report.

   (1) Applicants shall submit a completed application form directly to the member of the Board residing in the river district in which the project is located. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and [send] forward it to the Division for action.
   (2) Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.
   (3) An application form can be obtained from the Division, [or from] a Member of the Board, or the Division’s website.

   (1) After the application for assistance has been completed by the sponsor/applicant and[signed] signed by the Board member, [the following] and forwarded to the Division, a three-step process will be followed to determine those projects which will be funded by the Board.[130]
   (2) The three steps of the funding process are:
   (a) Approval for Staff Investigation
   (b) Project Sponsor is not required to attend the Board meeting at which the project application is presented.
   (c) As a condition of funding the sponsor will be required to prepare a "Water Management and Conservation Plan" (plan). If the project is approved the Division will send a letter to the sponsor outlining the items that the Board suggests be considered in the plan.
   (i) The Board member considers the proposed project to fall within the Board’s general statutory authority.
   (ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users’ support.
   (2) Authorization
      (a) The feasibility report will be presented to the Board, which takes into consideration the physical, engineering, legal, economic, and environmental factors affecting the project.
      (b) The Board will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.
   (k) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, the project sponsor must attend the Board meeting when the project is considered for authorization.
   (l) If the project is AUTHORIZED by the Board, a letter outlining the engineering and legal requirements for the project, [and the other conditions of the financial assistance will be sent to the sponsor. Several such conditions common to projects are:
      (i) Preparation of a Water Management and Conservation Plan for the sponsor’s service area.
      (ii) Adoption of an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m., the Division has prepared a Model Ordinance which is available for the sponsors of municipal projects.
      (iii) Adoption of a progressive water rate schedule (municipal projects). Division staff will assist sponsors in establishing such schedules to fit local conditions and circumstances.
   (3) Committal of Funds
      (a) After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the Board will commit funds and [authorize] its officers to enter into the necessary agreements to secure project financing.
      (b) [Normally,] The project sponsor [will not] normally be required to attend the Board meeting at which funds are to be committed for the project. [However, if] the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

   (1) After the application for assistance has been completed and signed by the Board member the application will be submitted to the Division for review. The Division staff will review the application for compliance with the Dam Safety Act and requirements, if any, placed on the sponsor by the State Engineer.
   (2) A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.
   (3) Grants will be considered when money is appropriated by the legislature and will be restricted by limitations placed on the funding by the legislature and Board.
   (4) The amount of each grant will be based on conditions determined by the legislature on the money appropriated, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

   (1) Project Cost Sharing
      (a) The Board desires to optimize available funding for the overall water development programs of the state and therefore requires sponsors to share in the cost of [the] projects.
      (b) The sponsor’s financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization.
The sponsor will generally be expected to provide 15%-25% of the project cost.

(c) If additional funds become available to the sponsor after the project is authorized, and if project costs do not increase, the additional funds will be used to reduce the Board’s financial participation.

(2) Alternate Financing

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(3) Repayment of Financial Assistance

(a) [Generally, t]he repayment period will generally be less than 25 years.

(b) The minimum annual cost of water for municipal projects will be 1.1[5]% of the region or project area’s annual median adjusted gross income.

(c) When annual payments are made with revenues from the sale or use of project water, the Board may allow the sponsor one year’s use of the project before the first payment is due.

(4) Security Arrangements

(a) Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.

(i) Projects financed through the Revolving Construction Fund must be secured by a purchase agreement.

(ii) Projects financed through the Cities Water Loan Fund or the Conservation and Development Fund will be secured either by a purchase agreement or by the sale of a bond.

(b) If project financing is secured by a purchase agreement, the following conditions apply:

(i) The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.

(ii) An opinion from the sponsor’s attorney must be submitted stating the sponsor has complied with its articles and bylaws, state law, and the Board’s contractual requirements.

(iii) Title to the project shall be returned to the sponsor upon successful completion of the purchase agreement.

(c) If project financing is secured by the sale of a bond, the following conditions apply:

(i) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act[-and-].

(ii) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(A) Hold a public meeting to describe the project and its need, cost, and effect on water rates[-and-].

(B) Give written notice describing the proposed project to all water users in the sponsor’s service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received from the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

(1) Engineering

To expedite projects and facilitate the coordination of project development, sponsors are encouraged to select a design engineer prior to making application to the Board.

(2) Staff and Legal Costs

(a) Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during [preliminary] project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of a sponsor’s bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

(3) Design Standards and Approval

(a) All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah registered professional engineer responsible for the work.

(b) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project.

(4) Project Bidding and Construction

(a) The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow a sponsor to act as its own contractor on small projects. However, in all cases the sponsor must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.

(b) The design engineer shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the registered professional engineer having responsible charge of project construction.


The foregoing guideline statements are meant as a guide for the Board, staff, and sponsor to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding*

[February 2, 1999]*2002
Notice of Continuation December 23, 1997
73-10-1

Public Safety, Fire Marshal

R710-2

Rules Pursuant to the Utah Fireworks Act

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24249
FILED: 11/15/2001, 13:54
RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and proposed that Rule R710-2, Rules Pursuant to the Utah Fireworks Act, be amended. The Board directed that the currently used Uniform Fire Code be changed to the International Fire Code (IFC).

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on November 13, 2001, and proposed the following to be completed by amending the existing rule as follows: 1) in Subsection R710-2-1(1.1), the Board proposes to incorporate by reference the IFC, 2000 edition, and no longer use the Uniform Fire Code; 2) in Section R710-2-2 Definitions, the IFC is added as a definition and the Uniform Fire Code is struck from the definitions; 3) in Subsections R710-2-5(5.1), R710-2-9(9.2.2.1), and R710-2-9(9.2.2.2), reference to the IFC replaces the reference to the Uniform Fire Code; and 4) there is also several sections that received numbering changes to make the rule consistent with the numbering system the fire service is used to dealing with.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204


ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an anticipated cost of approximately $300 to reprint the newly adopted rule and send it out to all those affected by the rule change. There would also be the cost of purchasing the IFC at approximately $65 per volume. Aggregate impact of the number of fire code volumes that would be purchased is impossible to predict due to the unknown number of volumes that would be purchased by various state agencies.

❖ LOCAL GOVERNMENTS: The aggregate impact to local government is impossible to predict due to the unknown number of local fire departments and building officials that would purchase the IFC at the approximate cost of $65 per volume.

❖ OTHER PERSONS: There is no anticipated cost to other persons because the proposed amendment does not affect them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately $65 per volume to purchase the IFC that would replace the currently used Uniform Fire Code.

COMMENTs BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses from the enactment of this proposed rule.

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 at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhalladay@dps.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Gary A Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710.2. Rules Pursuant to the Utah Fireworks Act.

R710-2-1. Adoption.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives; minimum requirements for placement and discharge of display fireworks; and requirements for importer, wholesaler, display or special effects operator licenses.

There is further adopted as part of these rules the following codes which are incorporated by reference:


1.4 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.


2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "ICC[IFC]" means International [Fire-]Code [Institute]Council, Inc.

2.3 "IFC" means International Fire Code.


[24] 2.5 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

[24] 2.6 "Person" means an individual, company, partnership or corporation.

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older. A salesperson shall remain at the sales location at all times unless suitable locking devices are provided to prevent the unauthorized access to the merchandise by others, or the merchandise is removed.

3.4 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.5 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.6 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.7 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.8 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.9 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

R710-2-4. Indoor Sales.

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units, with unexposed fuses, within a permanent structure.

R710-2-5. Temporary Stands, Trailers and Tents.

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with [the Uniform Fire Code], Article 32, Chapter 24 [1997 edition].

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

R710-2-6. List of Approved Class C Common State Approved Explosives.

6.1 The State Fire Marshal shall publish a list of approved class C common state approved explosives each year.

6.2 The testing shall be conducted annually or as needed.

R710-2-7. Importer, Wholesaler, Display or Special Effects Operator Licenses.

7.1 Application for a importer, wholesaler, display or special effects operator license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Licenses issued...
on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 8 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 8 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under eighteen (18) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 Every person who wishes to secure a display or special effects operator original license shall demonstrate proof of competence by:

7.10.1 Successfully passing a closed book written examination and obtaining a minimum grade of seventy percent (70%).

7.10.2 Submit written verification with the application of having completed a display or special effects operators safety class or demonstrate previous experience acceptable to the SFM.

7.10.3 Submit written verification with the application that the applicant has worked with a licensed display or special effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.11 The written examination stated in Section 7.10(a) shall be valid for five years from the date of the examination.

7.12 At the end of the five year period the licensed display or special effects operator shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.13.

7.13 After the issuance of the original license, and each year thereafter, the display or special effects operator shall complete a minimum of one fireworks performance annually or attend an operator safety class annually or work with another licensed display or special effects operator with a show annually to demonstrate proof of competence.

7.14 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Section 7.10 of these rules.

7.15 Every person who wishes to secure an importer, wholesaler, display or special effects operators license shall be at least 21 years of age.

7.16 Every licensed display or special effects operator shall complete the Pyrotechnician's After Action Report for Fireworks Display form within ten (10) working days after the conclusion of any display or special effects show and mail it to the State Fire Marshal.


8.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

8.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, person employed for, the person having authority, or the person in question commits any of the following violations:

- The person or applicant is not the real person in interest.
- Material misrepresentation or false statement in the application.
- Refusal to allow inspection by the AHJ.
- The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the examination or demonstrate practical skills.
- The person or applicant has been convicted of any of the following:
  - A violation of the provisions of these rules;
  - A crime of violence or theft;
  - Any crime that bears upon the person or applicant's ability to perform their functions and duties.
- Failure to accurately complete the Pyrotechnician's After Action Report for Fireworks Display form.

8.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

8.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

8.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

8.6 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 63-46b-5(i).

8.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

8.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.


9.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

9.2 UFC, Section 7802.3 is deleted, and amended to read as follows:

For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:
The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

Class C common state approved explosives shall not be stored in residences to include attached garages.

The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

In self storage units where the owner allows it.

In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

In a locked or secured truck, trailer, or other vehicle at an approved location.

In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

Wholesalers warehouse.

An approved Group M occupancy.

Any other structure or location approved by the authority having jurisdiction.

All other periods of time, except those stated in Section 9.2(1) of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

The storage and handling of fireworks are allowed as required in [Utah Code, Article 77, Chapter 33 and these rules].

The use of fireworks for display is allowed as set forth in [Utah Code, Article 77, Chapter 33 and these rules].

KEY: fireworks

[August 16, 2000] [January 2, 2002]

Notice of Continuation June 19, 1997

53-7-204

Public Safety, Fire Marshal

R710-3

Assisted Living Facilities

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 24242
FILED: 11/15/2001, 13:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and proposed that Rule R710-3, Assisted Living Facilities, be amended. The Board directed that the existing rule be amended to encompass all changes necessary to bring the rule in compliance with the proposed adoption of the International Fire Code (IFC).

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on November 13, 2001, and proposed that the following be completed by amending the existing rule as follows: 1) in Subsection R710-3-1(1.1), the Board proposes to incorporate by reference the International Fire Code, 2000 edition, and no longer use the Uniform Fire Code; 2) in Subsection R710-3-1(1.2), the Board proposes to incorporate by reference the International Building Code (IBC), 2000 edition, and no longer use the Uniform Building Code; 3) in Section R710-3-2, Definitions, the section is proposed to be numbered, definitions were added for the IFC and IBC, and the definitions no longer needed were deleted; 4) in Section R710-3-3, the Board proposes to make a number of amendments, additions, and deletions to make the rule consistent with the verbiage and placement in the newly proposed IFC; 5) in Subsections R710-3-3(3.2.8.1), R710-3-3(3.3.3.1), and R710-3-3(3.3.3.5.1), the Board proposes that in certain applications an automatic fire sprinkler system will need to be installed in Group I occupancies. It will also be required that each installation install quick response or residential fire sprinkler heads in patient or resident sleeping areas; and 6) the Board proposes to make other small explanatory changes, grammatical changes, and updating of numbering to clarify the rule and make it easier to understand.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204


ANTICIPATED COST OR SAVINGS TO:

The State Budget: There would be an anticipated cost of $250 to reprint the newly adopted rule and send it out to all those affected by the rule change. There would also be the cost of purchasing the IFC and IBC. The cost of the IFC is approximately $65 and the IBC is approximately $78. It is impossible to predict the aggregate anticipated cost of purchasing these regulatory books due to the unknown number of volumes that would be purchased by various state agencies.

Local Governments: The aggregate anticipated cost to local government is impossible to predict due to the unknown number of local fire and building departments that would purchase copies of the IFC and IBC.

Other Persons: There would be an anticipated cost for those assisted living facility operators that build Residential Group R-4 type facilities housing 6 to 16 residents. New facilities in the R-4 category would be required to install a fire sprinkler system in the new facility if they have more than eight residents. The cost of the fire sprinkler system would be approximately $2.50 per square foot. Aggregate anticipated impact is impossible to accurately state due to the unknown amount of R-4 facilities anticipated to be built and the size of each facility figured on a square foot basis.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately $65 per volume of the IFC and $78 per volume of the IBC. There is also the compliance cost for those assisted living operators who anticipate building Residential Group R-4 facilities. They would be required to install a fire sprinkler system at approximately $2.50 per square foot.
R710-3. Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans and preparedness—provide staff training in the usage of all emergency equipment to include portable fire extinguishers, hood systems, fire alarms, and fire drills, in addition to those requirements in the IFC as required in [H][IFC, Article 13] Chapter 4.

3.1.3 IFC, Chapter 9, Sections 907.3.1.2 and 907.3.1.9 is deleted.

3.2 Type [H]1 Assisted Living Facilities

3.2.1 Type [H]1 Limited Capacity Assisted Living Facilities shall be constructed in accordance with [H][IBC, Residential Group...
R-3. [Division 3 Occupancies] and maintained in accordance with the [LJIBC and [LIFC].

3.2.2 Type [H] Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type [H] Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type [H] Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in [HJIBC, Chapter [H]10, Section [H]10-4.1.009.

3.2.5 In Type [H] Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.2.6 Type [H] Small Assisted Living Facilities shall be constructed in accordance with [LJIBC, Appendix Chapter 3, Division IV - Requirements for Residential Group R-4 - Division 4 Occupancies] and maintained in accordance with the [LJIBC and [LIFC].

3.2.6.1 An automatic fire sprinkler system shall be provided throughout buildings listed as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.2.7 Type [H] Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type [H] Large Assisted Living Facilities shall be constructed in accordance with [LJIBC, Institutional Group I-1 - Division 2.] and maintained in accordance with the [LJIBC and [LIFC].

3.2.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3 Type [H] Assisted Living Facilities

3.3.1 Type [H] Limited Capacity Assisted Living Facilities shall be constructed in accordance with [LJIBC, Appendix Chapter 3, Division IV - Requirements for Residential Group R-4 - Division 4 Occupancies] and maintained in accordance with the [LJIBC and [LIFC].

3.3.1.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.2 Type [H] Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the [LJIBC and IFIC], or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type [H] Small Assisted Living Facilities shall be constructed in accordance with [HJIBC, Institutional Group I-1 - Division 2.] and maintained in accordance with the [HJIBC and [LIFC].

3.3.3.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.4 Type [H] Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.5 Type [H] Large Assisted Living Facilities shall be constructed in accordance with [LJIBC, Institutional Group I-2 - Division 2.] and maintained in accordance with the [LJIBC and [LIFC].

3.3.5.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.6 Type II Large Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.6.1 Upon request to the Utah Department of Health for a non-ambulatory variance as allowed in Utah Administrative Code, R432-2-18, the following conditions shall be met:

3.3.6.2 The attending physician's diagnosis and orders for care.

3.3.6.3 Hospice plan of care if applicable

3.3.6.4 The facilities service plan which includes a statement that the facility is willing and capable of meeting the residents' needs.

3.3.6.5 A statement from the responsible party stating that they will be involved in the plan of care.

3.3.6.6 The resident will be provided with 24 hour/7 day one to one care and that care giver will be capable of exiting the resident from the facility in an emergency.

R710-3.4. 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.

R710-3.5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3.6. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.


7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.
7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 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 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: assisted living facilities
Notice of Continuation June 19, 1997
53-7-204

Public Safety, Fire Marshal
R710-4
Buildings Under the Jurisdiction of the State Fire Prevention Board

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24243
FILED: 11/15/2001, 13:34

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Fire Prevention Board met and proposed that Rule R710-4, Buildings Under the Jurisdiction of the State Fire Prevention Board, be amended. The Board directed that the existing rule be amended to encompass all the required changes necessary to bring the rule into compliance with the proposed adoption of the International Fire Code (IFC), 2000 edition.

SUMMARY OF THE RULE OR CHANGE: The Fire Prevention Board met in a regularly scheduled Board meeting on November 13, 2001, and proposed that the following be completed by amending the existing rule as follows: 1) in Subsection R710-4-1(1.4), the Board proposes to add the wording that wherever the reference to the "ICC Electrical Code" is stated it will be replaced with the "National Electrical Code". This all encompassing amendment will prevent numerous and repetitive references to have to be enacted in the rule to amend the electric code; 2) in Subsection R710-4-1(1.5), the Board proposes to incorporate by reference the International Building Code (IBC), 2000 edition, and no longer use the Uniform Building Code; 3) in Subsection R710-4-1(1.6), the Board proposes to incorporate by reference the IFC, 2000 edition, and no longer use the Uniform Fire Code; 4) in Subsection R710-4-1(1.7), the Board proposes to incorporate by reference the 2000 edition of the International Mechanical Code and no longer use the 1998 edition; 5) in Subsections R710-4-1(1.8) and (1.9), the Board proposes to incorporate by reference the International Fuel Gas Code (IFGC), 2000 edition, and the International Plumbing Code (IPC), 2000 edition; 6) in Section R710-4-2, Definitions, the section is proposed to be numbered, definitions were added for the International Codes, and the definitions no longer needed are proposed to be struck; 7) in Section R710-4-3, there are a number of amendments and additions that were changed or deleted to make the rule consistent with the verbiage and placement in the newly proposed IFC. There were also some changes in the minimum number requirements to coincide with the State Health Department rules; 8) in Subsection R710-4-3(3.10), the Board proposes to add distinctions to the assisted living categories and add ambulatory surgical centers to the Group I-2 category; 9) in Subsection R710-4-3(3.11), the Board proposes to amend the Group I category and require quick response or residential sprinkler heads to be installed in patient or resident sleeping areas. Residential Group R-4 categories will be required to install fire sprinkler systems in facilities that have more than eight occupants; and 10) in Subsection R710-4-3(3.12), the Board proposes to delete the retroactive installation requirement of fire alarm systems in Group E, Group I, and Residential Group R-4 occupancies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204


ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There would be an anticipated cost of $500 to reprint the newly adopted rule and send it out to all those affected by the rule change. There would be the total cost of approximately $295 to purchase all the newly incorporated references. It would be impossible to predict the aggregate anticipated cost of purchasing these incorporated references due to the unknown number that will be purchased, the number of state agencies that will buy them, and the unknown number that would be purchased separately.
❖ LOCAL GOVERNMENTS: The aggregate anticipated cost to local government is impossible to predict due to the unknown number of local fire and building officials that would purchase copies of these codes.
❖ OTHER PERSONS: There would be an anticipated cost for those that have a Residential Group R-4 occupancy and have more than eight occupants. This occupancy would have to install a fire sprinkler system in that facility. The cost of the installation of the fire sprinkler system would be approximately $2.50 per square foot. Aggregate anticipated impact is impossible to accurately state due to the unknown amount of R-4 facilities anticipated to be built or remodeled and the size of each facility figured on a square foot basis. There would be
an aggregate anticipated savings to those existing Group E, Group I and Residential Group R-4 occupancies that would be required under the proposed IFC to install a fire alarm system retroactively. The anticipated cost savings would be a minimum of several thousand dollars per occupancy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately $295 to purchase all the newly incorporated references. The price would obviously decrease if the incorporated references were not all needed and only a certain number were purchased. There is also the compliance cost for those occupancies that are Residential Group R-4, have more than eight occupants, and are required to install a fire sprinkler system. The cost of the sprinkler system would be approximately $2.50 per square foot.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For new businesses that are Residential Group R-4 and have more than eight occupants, those businesses would be required to install a fire sprinkler system at approximately $2.50 per square foot. There is also a savings that would be shown to existing Group E, Group I, and Residential Group R-4 occupancies that do not currently have an existing fire alarm system installed. The deletion of the anticipated cost savings would be a minimum of several thousand dollars per occupancy.

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 at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@dps.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Gary A Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used[.] or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center[organization], or any similar institutional type occupancy of any capacity; and in any place of assembly where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:
1. National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2000 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.
6. The following UBC appendix chapter is adopted:
   - Chapter 3 - Division IV, Requirements for Group R, Division 4 Occupancies.
7. International Fire Code (IFC), [Volume 1, 1992], 2000 edition, as published by the International Fire Code Institute, Inc. (IFC[IC]), except as amended by provisions listed in R710-4-3, et seq.
8. The following UBC appendix chapters are adopted:
   - (a) Appendix L - C Stairway Identification.
   - (b) Appendix III C Inspection, Testing and Maintenance of Water Based Fire Protection Systems.
   - (c) Appendix IV A Interior Finish.
   - (d) Appendix VI A Hazardous Materials Classifications.
   - (e) Appendix VI E Reference Tables from the Uniform Building Code.
10. The following UFC standards are amended as follows:
NOTICES OF PROPOSED RULES


[I-91] 10 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-3. Amendments and Additions.

3.0 The following amendments and additions are hereby adopted for those buildings under the jurisdiction of the State Fire Marshal:

3.1 Door Closures

3.1.1 [LI] [IFC, Article 11, Chapter 7, Section 1111.2.2 Operation] 703.2 Add the following Exception. In Group E Occupancies, [Division 1 and 2] where the occupant load is greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors only.

3.2 Dumpster

3.2.1 [H] [IFC, Article 11, Chapter 3, Section 1103.2.2] 304.3 with reference to Group E Occupancies, is amended to add the following requirement:

Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet) (1.15m) or [greater] more shall not be stored in buildings or placed within 20 feet of combustible walls, openings or combustible roof eave lines.

3.3 Fire Alarm Systems

3.3.1 General Provisions

3.3.2 [The following rules pertain to newly installed systems or changes made to existing systems, except where noted:] [a]

3.3.1.1 Presignal feature type systems are prohibited, except in I-3 Occupancies.

3.3.1.2 Fire alarm systems designed submitted to the AHJ, shall include complete floor plans showing location of all devices, occupancy use of each room, schematic wiring diagrams, battery calculations, and any other items deemed necessary.

3.3.2 Required Installations

3.3.2.1 [If] [IFC, Article 11, Chapter 9, Section 1107.907, and Chapter 1107.907, and LSC Chapters as adopted, and in other rules promulgated by the Board.

3.3.2.2 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of [one hundred (100)] 100 or more, all schools with an occupant load of [fifty (50)] 50 or more, shall have an approved fire alarm system with the following features:

3.3.2.2.1 Product-of-combustion (smoke) detectors installed throughout all corridors and common areas of egress at the maximum prescribed spacing of thirty feet on center, and no more than fifteen feet from the walls.

3.3.2.2.2 In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.

3.3.2.2.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.2.2.4 The fire alarm system shall be connected to a proprietary panel, where provided within the complex.

3.3.3 Main Panel

3.3.3.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and
authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.4 System Wiring

[6a] 3.3.4.1 System Wiring shall be in accordance with the following:

[6b] 3.3.4.1.1 The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

[6c] 3.3.4.1.2 The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

3.3.4.1.3 Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

[6d] 3.3.4.2 All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

3.3.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

3.3.6 Fan Shut Down

[6e] 3.3.6.1 The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

[6f] 3.3.6.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.7 Maintenance and Tests

The owner/administrator of each building shall insure maintenance and testing as required in [[IFC, [Article 10] Chapter 9, Section 1001.4 and 1001.5]]901.5 and 901.6. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

3.4 Fireworks

3.4.1 [IL] IFC, [Article 78] Chapter 31, Section [2002.2]]301.1.3 is amended to include the following: additional Exception:

[Exception No. 3.15] The use of fireworks for display and retail sales is allowed as set forth in the "Utah Fireworks Act", as adopted in Title 11, Chapter 3, Utah Code Annotated 1953 [UCA 53-7-220 and UCA 11-3-1.]

3.5 Health Care Facilities

5.1 LSC Chapters [[12]18, 19, 20 and [42]21, Sections [42- ]18,1,1.2,4, 19,1.2,4, 20,1.2,2 and [42-1,2,4]]2,1,2,2 (Exiting Through Adjoining Occupancies) exception is deleted.

3.5.2 LSC Chapter [[43]]43, Section [43-19.3,6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

3.6 [6g] 3.6.1 The fire department connection on automatic fire sprinkler and standpipe systems shall be located a reasonable distance as approved by the AHJ.

3.7 Fire Sprinklers and Standpipes

3.7.1 [Class 1 and Class 2 fire protection systems, as defined in AWWA, M14, Second Edition, "Recommended Practice for Backflow Prevention and Cross Connection Control," shall be provided with a listed alarm check valve with standard trim.] The potable water supply to automatic fire sprinkler and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(41).

3.7.2 Antifreeze systems [installed in Class 1 and Class 2 fire protection systems] shall be installed as required in NFPA, Standard 13, and a backflow preventing device shall be installed as required in the Uniform Plumbing Code protected against backflow as required in Utah Administrative Code, R156-56-707(42).

3.8 Water Supply Analysis

3.8.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.8.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.8.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-1712-2.1.

3.9 Fire Drills

3.9.1 [IL] IFC, [Article 13] Chapter 4, Section [1303.3.2(1)]405.2 is amended to include the following: additional Exception following to Group E as specified in Table 405.2:

[Exception No. 2.0.] A fire drill in secondary schools shall be conducted at least every two months, to a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year.

3.10 Institutional

3.10.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.10.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following:

On line nine add "type 1" in front of the words "assisted living facilities".

3.10.3 IFC, Chapter 2, Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

3.10.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

3.10.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.11 Automatic Sprinkler Systems

3.11.1 IFC, Chapter 9, Section 903.2.5 is deleted and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient to resident sleeping areas.

3.11.2 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group R-4 fire areas that contain more
than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.12 Retroactive Installation of Automatic Fire Alarm Systems
3.12.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4 and 907.3.1.9 is deleted.

R710-4-4. 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.

R710-4-5. Validity.
The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination herefrom of any such portion as may be declared invalid.

R710-4-6. Conflicts.
In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.
7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.
7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.
7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.
7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.
7.5 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 63-46b-5(i).
7.6 Reconsideration of the Board’s decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.
7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, public buildings
Notice of Continuation June 19, 1997
53-7-204

Public Safety, Fire Marshal
R710-6
Liquefied Petroleum Gas Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24244

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum (LP) Gas Board met and proposed that Rule R710-6, Liquefied Petroleum Gas Rules, be amended. The Board directed that the existing rule be amended to bring the rule into compliance with the proposed adoption of National Fire Protection Association (NFPA) 58, NFPA 1192, and the International Fire Code (IFC).

SUMMARY OF THE RULE OR CHANGE: The Liquefied Petroleum Gas Board met in a regularly scheduled Board meeting on October 12, 2001, and proposed that the following be completed by amending the existing rule as follows: 1) in Subsection R710-6-1(1.1), the Board proposes to incorporate by reference the NFPA, Standard 58, LP Gas Code, 2001 edition; 2) in Subsection R710-6-1(1.3), the Board proposes to incorporate by reference NFPA, Standard 1192, Standard on Recreational Vehicles, 1999 edition; 3) in Subsection R710-6-1(1.4), the Board proposes to incorporate by reference Chapter 38 of the IFC, 2000 edition; 4) in Section R710-6-8, any references to the Uniform Fire Code is struck and the appropriate sections of the IFC are applied; 5) in Subsection R710-6-8(8.6.4), NFPA 58, Section 2-2.5.1 is amended to allow skid mounted LP Gas containers over 2,000 water gallons to be mounted on the attached supports a maximum of 12 inches from the top of the skid to the bottom of the container rather than the currently allowed 6 inches; 6) in Subsection R710-6-8(8.6.6), NFPA 58, Section 5.4.1.1 is deleted and rewritten allowing exchange cabinets to be placed 10 feet from any door or opening in a building frequented by the public; and 7) there were other explanatory changes, grammatical changes, and numbering additions to clarify the rule and make it easier to understand.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305


ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There would be an anticipated cost of $800 to reprint the newly adopted rule and send it out to all those affected by the rule change. There would be an approximate cost of $94 to purchase all the newly incorporated references. It would be impossible to predict the aggregate anticipated cost of purchasing these incorporated references due to the unknown number of state agencies that will buy them or the unknown number that would be purchased separately by state agencies.
LOCAL GOVERNMENTS: The aggregate anticipated cost to local government is impossible to predict due to the unknown number of local fire and building officials that would purchase copies of these codes.

OTHER PERSONS: There would be an anticipated cost of approximately $25 to purchase NFPA 1192, approximately $33 to purchase NFPA 58, and approximately $65 to purchase the International Fire Code. The aggregate anticipated cost to other persons is impossible to predict due to the unknown number of code books that would be purchased. There would be an aggregate anticipated savings to those citizens that own horizontal LP Gas cylinders. They will now be allowed to be refilled rather than discarded when recertification is required. This will be a savings of approximately $50 to $300 per cylinder.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately $25 to purchase NFPA 1192, approximately $33 to purchase NFPA 58, and approximately $65 to purchase the IFC. It would be presumed that most of the 75 LP Gas distributors would purchase at least one NFPA 58, 2001 edition, and a lesser number of Recreational Vehicle Repair Facilities would purchase NFPA 1192. There are an unknown number of fire and building officials that would purchase the IFC.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only fiscal impact seen by the adoption of this rule would be the requirement to purchase the newly adopted standards. This is a very minimal impact to selected businesses who need these standards to conduct business safely using a hazardous product.

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 at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@dps.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002
AUTHORIZED BY: Gary A Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install L.P. Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:


[1.6] A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the above referenced codes shall also pertain to these rules.

[1.7] Title.
These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

[1.8] Validity.
If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

[1.9] Conflicts.
In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Division" means the Division of the State Fire Marshal.

2.4 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.5 [IFC][IC], means International [Fire] Code [Institute] Council, Inc.

2.6 "IFC" means International Fire Code.
"License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business. "LPG" means Liquefied Petroleum Gas. "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required. "NFPA" means the National Fire Protection Association. "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling. "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent. "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing. "UCA" means Utah State Code Annotated 1953 as amended. "UFC" means Uniform Fire Code. "UTFS" means Uniform Fire Code Standards.]

R710-6-3. Licensing.

3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made in writing on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.
4.3 Types of Initial Examinations:

- [4] Carburator
- [5] Dispenser
- [6] HVAC/Plumber
- [7] Recreational Vehicle Service
- [8] Serviceman
- [9] Transportation and Delivery

4.4 Initial Examinations.

[4][4] The initial examination shall include an open book written test of the applicant’s knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

[4][4] The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

[4][4] To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

[4][4] Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

[4][4] As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made [in writing] on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

[4][4] The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of a 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

[4][4] The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

[4][4] The certificate holder is responsible to complete the 25 question re-examination and return it to the Division in sufficient time to renew.

[4][4] The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Article 5.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

[4][4] Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

[4][4] Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

[4][4] It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported to the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

[4][4] The name and address of the applicant.


[4][4] The signature of the LPG Gas Board Chairman.

[4][4] The date of issuance.


[4][4] Type of service the person is qualified to perform.

[4][4] Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

[4][4] No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

[4][4] A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

[4][4] Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

[4][4] Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

[4][4] Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.
Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentsions shall state the reason for the objection.

The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.
LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.
New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.
Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6.5. Adjudicative Proceedings.
5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

(a) The person or applicant is not the real person in interest.
(b) Material misrepresentation or false statement in the application, whether original or renewal.

(c) Refusal to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

(d) The person, applicant, or concern does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

(e) The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

(f) The person or applicant refuses to take the examination.

(g) The person or applicant has been convicted of any of the following:

(i) A violation of the provisions of these rules; or

(ii) A crime of violence or theft; or

(iii) A crime that bears upon the person or applicant's ability to perform their functions and duties.

The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division 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 63-46b-5(i).

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 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-6.6. Fees.
6.1 Fee Schedule.

<table>
<thead>
<tr>
<th>License and LPG Certificates (new and renewals):</th>
</tr>
</thead>
<tbody>
<tr>
<td>License</td>
</tr>
<tr>
<td>Class II</td>
</tr>
<tr>
<td>Class III</td>
</tr>
<tr>
<td>Class IV</td>
</tr>
<tr>
<td>Branch Office License</td>
</tr>
<tr>
<td>LPG Certificate</td>
</tr>
<tr>
<td>LPG Certificate [Dispenser-Class B]</td>
</tr>
<tr>
<td>Duplicate</td>
</tr>
<tr>
<td>Examination:</td>
</tr>
<tr>
<td>Initial examination</td>
</tr>
<tr>
<td>Re-examination</td>
</tr>
<tr>
<td>Five year examination</td>
</tr>
<tr>
<td>Plan Reviews:</td>
</tr>
<tr>
<td>More than 5000 water gallons of LPG</td>
</tr>
<tr>
<td>5,000 water gallons or less of LPG</td>
</tr>
<tr>
<td>Special Inspections:</td>
</tr>
<tr>
<td>Per hour of inspection</td>
</tr>
<tr>
<td>Half hour increments charged as full half hours.</td>
</tr>
<tr>
<td>Re-inspection [3rd inspection or more]</td>
</tr>
</tbody>
</table>

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if
the application was being taken for the first time. Examinations will be retaken with initial examination fees.

**R710-6-7. Board Procedures.**

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 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.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 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 twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

**R710-6-8. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

- **[a]** 8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.
- **[b]** 8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.
- **[c]** 8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.
- **[d]** 8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

- **[a]** 8.3.1 Those excluded from the act in UCA, Section 53-7-303.
- **[b]** 8.3.2 Containers under federal control.
- **[c]** 8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.
- **[d]** 8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 **[IFC]** IFC Amendments:

- **[a]** (a) UEC, Section 8201. Scope. On line 4 after the wording "Appendix B," insert the following: "Also reference NFPA, Standard 58, as amended by the Board".
- **[b]** 8.5.1 [IFC] IFC, Section [8202.1]3801.2 Permits-[and Plans]. On line 2 after the word "[see] [105.7]" replace "Section 105, Permit 1.1," with "and the adopted LPG rules". [The rest of UEC, Section 8202.1 is deleted.]
- **[c]** (e) UEC, Section 8202.2 Records, is deleted.
- **[d]** 8.5.2 **[IFC]** IFC, Section [8202.1]3803.1 - General. [Starting on line 2, after the wording "installed in accordance with" insert "NFPA Standard 58, NFPA Standard 58, and"] After the word "Code" on line 2 insert "NFPA 54.
- **[e]** UEC, Section 8204.1 General. On line 3 delete "and subject to the approval of the chief," and replace it with "as amended by the Board".
- **[f]** (f) UEC, Section 8204.2 on line 4 after the wording "areas" insert "as determined by the Board".
- **[g]** (g) UEC, Section 8208.73 Smoking and Other Sources of Ignition. On line 1 replace "chief" with "enforcing authority".
- **[h]** 8.5.3 [IFC] IEC, Section [8242.1]3809.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1.

8.6 **[IFC]** IFC Amendments:

- **[a]** The amendments listed in Part 1, Section 82.101 are deleted.
- **[b]** The 1989 edition of NFPA, Standard 58, Section listed in Part II is deleted and replaced with the 1998 edition of NFPA, Standard 58, 8.2.8.6 NFPA, Standard 58 Amendments:
- **[c]** 8.6.1 NFPA, Standard 58, Section 8.2.2.1.3 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall either be registered by the National Board of Boiler and Pressure Vessel Inspectors or the Manufacturer's Data Report for Pressure Vessels, Form U-1A, be provided.
- **[d]** 8.6.2 NFPA, Standard 58, Section 8.2.2.1.3 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner. Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and
construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

[8.6.4] NFPA. Standard 58, Section 2-2.5.1 is amended to add the following: Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

[8.6.5] NFPA Standard 58, Sections 2-4.3.1 and 2-4.3.1(1) and (2) are deleted and amended to read as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.6 NFPA, Standard 58, Section 5.4.1.1 is deleted and rewritten as follows: At least 10 feet from the doorway or opening frequented by the public.

R710-6.9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

<table>
<thead>
<tr>
<th>TABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.1.1</td>
</tr>
<tr>
<td>9.1.2</td>
</tr>
<tr>
<td>9.1.3</td>
</tr>
<tr>
<td>9.1.4</td>
</tr>
<tr>
<td>9.1.5</td>
</tr>
<tr>
<td>9.1.6</td>
</tr>
</tbody>
</table>

9.2 Rationale.

[9.2.1] Double the fee plus the cost of the license.
[9.2.2] Double the fee plus the cost of the certificate.
[9.2.3] Double the fee plus the cost of the license.
[9.2.4] Double the fee.
[9.2.5] Based on two hours of inspection fee at $30.00 per hour.

[9.2.6] Triple the fee.

KEY: liquefied petroleum gas

January 16, 2004 to January 2, 2002

Notice of Continuation July 5, 2001
53-7-305

Public Safety, Fire Marshal
R710-8
Day Care Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24245

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Fire Prevention Board met and proposed that Rule R710-8, Day Care Rules, be amended. The Board directed that the existing rule be amended to encompass all the changes necessary to bring the rule into compliance with the proposed adoption of the International Fire Code (IFC), 2000 edition.

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board met in a regular scheduled Board meeting on November 13, 2001, and proposed that the following be completed by amending the existing rule as follows: 1) In Subsection R710-8-1(1.1), the Board proposes to incorporate by reference the IFC, 2000 edition; 2) In Subsection R710-8-1(1.2), the Board proposes to incorporate by reference the International Building Code (IBC), 2000 edition; 3) In Subsections R710-8-2(2.3) and R710-8-2(2.4), the Board proposes to redefine the definition of “Client” and “Day Care Facility” to be consistent with the newly adopted IFC; 4) In Section R710-8, the Board proposes to restructure this section into specific sections by day care type making the rule easier to understand and read; and 5) In Section R710-8-3, the Board proposes to make a number of changes to make the rule consistent with the verbiage and placement in the proposed IFC and consistent with the adopted State Health Department guidelines.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204


ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: There would be an anticipated cost of $600 to reprint the newly adopted rule and send it out to all those affected by the rule change. There would also be the cost of purchasing the IFC and the IBC. The cost of the IFC is approximately $65 and the cost of the IBC is approximately $78. It is impossible to predict the aggregate anticipated cost of purchasing these books due to the unknown number of volumes that would be purchased by various state agencies.
LOCAL GOVERNMENTS: The aggregate anticipated cost to local government is impossible to predict due to the unknown number of local fire departments and building officials that would purchase copies of these codes.

OTHER PERSONS: There would be no aggregate anticipated cost to other persons from the enactment of this rule because they will not be affected by cost or savings with this rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately $65 per volume of the IFC and $78 per volume of the IBC.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business from the enactment of this rule

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 at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@dps.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Gary A Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-8-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:


1.3 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)") means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

2.4 "Day Care Facility" means any building or portion thereof, where clients receive care, maintenance, and supervision for less than 24 hours per day, and which is not classified in the Uniform Building Code as E-1 or E-2 occupancy or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

2.5 "Day Care Center" means providing care for five or more clients in a place other than at the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

2.6 "Family Day Care" means providing care for clients listed in the following two groups:

1a Type [II] - Services provided for two to five clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

b Type [II] - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

2.7 "IBC" means International Building Code.

2.8 "ICC[IFC]" means International Fire Code. [Institute].

2.9 "IFC[IBC]" means International Building Code. [Code Council, Inc.].

2.10 "UTC" means Uniform Fire Code.

R710-8-3. Amendments and Additions.

3.1 Exemptions.

3.1.1 Places of worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.

3.2 Fire Code Amendments.

3.2.1 IFC, Chapter 2, Section 202. Educational E, Day Care is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.2.2 IFC, Chapter 2, Section 202, Institutional Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.2.3 IFC, Chapter 2, Sections 907.3, 1.1 Group E is deleted.

3.3 Family Day Care.

3.3.1 Family Day Care units shall have on each floor occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.
3.2 Family Day Care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.

3.2.1 Type II Family Day Care units, located on the ground level or in a basement, may use an emergency escape or rescue window as a substitute for one of the required means of egress if the following conditions are met: if allowed in IFC, Chapter 10, Section 1009.

a. The escape or rescue window is operable from the inside without the use of separate tools or any special knowledge, key or effort.

b. The escape or rescue window has a minimum net clear openable area of 3.7 square feet. The minimum net clear openable height dimension shall be 24 inches. The minimum net clear openable width dimension shall be 20 inches. The finished sill height shall not be more than 44 inches above the floor.

c. Escape or rescue windows with a finished sill height below the adjacent ground level shall have a window well of sufficient size to allow proper egress.

d. Window wells with a vertical depth of more than 44 inches shall be equipped with an approved permanently affixed ladder or stairs.

3.3.3 Family Day Care units shall not be located above the second story.

3.3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

3.3.6 Family Day Care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10.

3.3.7 Family Day Care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.3.8 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

3.3.9 Fire drills shall be conducted in Family Day Care units monthly and shall include the complete evacuation from the building of all clients and staff. At least quarterly, in Type I Family Day Care units, the fire drill shall include the actual evacuation using the escape or rescue window, if one is used as a substitute for one of the required means of egress.

3.4 Day Care Centers

3.4.1 Day Care Centers shall comply with either the E-2 requirements or E requirements of the Uniform Building Code, whichever is applicable for the type of Day Care Center.

3.4.2 Fire Drills shall be completed as required in IFC, Chapter 4, Section 405.

3.5 Requirements for all Day Care

3.10 Places of religious worship shall not be required to meet the provisions of this Rule in order to operate a nursery while religious services are being held in the building.

3.5.1 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

3.12 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

3.13 Fire drills shall be conducted in Family Day Care units monthly, and shall include the complete evacuation from the building of all clients and staff. Fire Drills in Day Care Centers shall be completed as required in UFC, Section 1203.2.3, under Group E Occupancies. All fire drills shall be documented to include the date of the fire drill and who participated. At least quarterly in Type I Family Day Care units, the fire drill shall include the actual evacuation using the escape or rescue window, if one is used as a substitute for one of the required means of egress.

3.13.5 The Authority Having Jurisdiction (AHJ) shall ensure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

3.14 For Day Care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

R710-8-4. 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.

R710-8-5. Validity.

The 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 Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

R710-8-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving the final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 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 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.
Public Safety, Fire Marshal

R710-9

Rules Pursuant to the Utah Fire Prevention Law

NOTICE OF PROPOSED RULE
( Amendment)
DAR FILE NO.: 24246

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Fire Prevention Board met and proposed that Rule R710-9, Rules Pursuant to the Utah Fire Prevention Law, be amended. The Board directed that the existing rule be amended to encompass the proposed adoption of the International Fire Code (IFC), establish compatible rules for amendments to the IFC, create a Fire Service Education Administrator and Program Coordinator, and create a Board Amendment Subcommittee.

SUMMARY OF THE RULE OR CHANGE: The Fire Prevention Board met in a regularly scheduled Board meeting on November 13, 2001, and proposed that the following be completed by amending the existing rule as follows: 1) in Section R710-9-2, the Board proposes to make the necessary changes to enable the definitions to be consistent with the IFC; 2) in Subsection R710-9-3(3.1), the Board proposes to incorporate by reference the IFC, 2000 edition, as the state fire code, and strike all references to the Uniform Fire Code; 3) in Section R710-9-5, the Board proposes that this section be amended regarding the procedure to amend the IFC and make the rule consistent with the state statute; 4) in Subsection R710-9-6(6.1), the Board proposes to amend the institutional category classification by occupants to be consistent with the adopted State Health Department guidelines and add new occupancies to be classified as Group I-2; 5) in Subsection R710-6-6(6.2), the Board proposes to add the requirement for record drawings or “as built” to verify any modifications to installed systems; 6) in Subsection R710-9-6(6.3), the Board proposes to amend the Group I category and require that quick response or residential fire sprinkler heads to be installed in patient or resident sleeping areas; 7) in Subsection R710-9-6(6.5), the Board proposes to strike from the IFC the retroactive requirements for the placement of fire alarm systems in certain occupancies; 8) in Subsection R710-9-6(6.6), the Board proposes to add the requirement for Backflow Protection to fire sprinkler and standpipe systems as required by Subsection R156-56-707(41); 9) in Subsection R710-9-6(6.7), the Board proposes to add the requirement to require floor level exit signs in R-1 occupancy exits and amusement building exits; 10) in Section R710-9-6, the Board also proposes to make several other amendments to make the rule consistent with the verbiage and placement in the IFC; 11) in Section R710-9-7, the Board proposes to create a Fire Advisory and Code Analysis Committee to be combined into a Unified Code Analysis Council; 12) in Section R710-9-8, the Board proposes to create a Fire Service Education Administrator and a Fire Education Program Coordinator; and 13) in Section R710-9-11, the Board proposes to create a Board Budget Amendment Subcommittee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204


ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There would be an anticipated cost of $500 to reprint the newly adopted rule and send it out to all those affected by the rule change. There would be the cost of approximately $65 per volume to purchase the IFC. It is impossible to predict the aggregate anticipated cost of purchasing these regulatory books due to the unknown number of volumes that would be purchased by various state agencies. There would be the anticipated cost of approximately $2,000 to the budget of the State Fire Marshal’s Office to upgrade the Fire Academy Liaison to a Fire Education Program Coordinator.
❖ LOCAL GOVERNMENTS: There would be an anticipated cost to local government to be required to submit all local amendments to the Board for approval as required in the statute. It is unknown the amount of anticipated cost if a fire official from the local government wished to travel to Salt Lake City to provide input to the Board’s decision. It would vary by how many officials came to the meeting and the distance traveled to the meeting.
❖ OTHER PERSONS: There would be an anticipated cost for those occupancies that were required to install floor level exit signs in certain occupancies. The addition would be approximately $200 per sign. Aggregate anticipated impact is impossible to accurately state due to the unknown amount of these signs required and the amount of exits needing this protection.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately $65 per volume of the IFC purchased, $2,000 to the budget of the State Fire Marshal’s Office to upgrade to a Program Coordinator and the $200 per sign requirement for certain occupancies to provide floor level exit signs.

COMMENTs BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For those businesses that are classified as Group R-1 (Hotels, Motels and Boarding Houses) and Amusement Buildings, there would be a small fiscal impact on new businesses to be required to place exit signs near the floor as was required in the Uniform Building Code. There would also be a small fiscal impact on businesses that were required to provide record drawings or “as built” if they modify from original drawings.
NOTICES OF PROPOSED RULES

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 at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@dps.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/02/2002

AUTHORIZED BY: Gary A Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.


R710-9-1. Title and Authority.
1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", 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, Utah Code Annotated 1953, as amended.

2.1 "Academy" means Utah Fire and Rescue Academy.
2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.
2.3 "Administrator" means Fire Service Education Administrator.
2.4[14] "Board" means Utah Fire Prevention Board.
2.6 "Coordinator" means Fire Education Program Coordinator.
2.7[16] "Division" means State Fire Marshal.
2.9[18] "IFC" means International Fire Code.
2.10[19] "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.
2.2[20] "LFA" means Local Fire Authority.
2.2[21] "Law School" means Fire Academy Liaison.
2.2[23] "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.
2.2[24] "Plan" means Fire Academy Strategic Plan.
2.2[25] "SFM" means State Fire Marshal.
2.2[26] "Standards Council" means Fire Service Standards and Training Council.
2.2[27] "Sub-Committee" means Fire Prevention Board Sub-Committee or Amendment Sub-Committee.
      — 2.2[29] "UFC" means Uniform Fire Code.

3.1 The [Uniform International Fire Code (UIFC), Volume I, 1997 edition, excluding appendices, as promulgated by the International Fire Code Institute. Council, Inc., is hereby adopted and incorporated by reference as the state fire code, for the safeguarding of life and property from the hazards of fire and explosion, except as amended by provisions listed in R710-9-6, et seq.
3.2 The Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference, as a set of standards that are specifically referred to within various sections of the UFC. The following Uniform Fire Code Standards are amended as follows:

R710-9-4. Conduct of Board Members and Board Meetings.
4.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.
4.2 A quorum shall be required to approve any action of the Board.
4.3 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.
4.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.
4.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.
4.6 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.

4.7 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 shall be submitted to the governor’s office for status review.


5.1 All requests for amendments which would be less restrictive than the adopted edition of the IFC, to the IFC shall be submitted to the division [to be presented in 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 meeting of the Board.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

[a.] 5.3.1 [make a recommendation to accept the proposed amendment as submitted or as modified by the Board;]

[b.] 5.3.2 [make a recommendation to reject the adoption of the proposed amendment;]

[c.] 5.3.3 [make a recommendation to submit the proposed amendment to the Board Amendment Subcommittee [an ad hoc committee or formal organization] for further study; or]

[d.] 5.3.4 [make a recommendation that the proposed amendment be returned to the requesting agency, accompanied by Board comments, for the purpose of reconsidering and resubmitting the request for the request to the agency to resubmit the proposed amendment with modifications.]

5.4 The Board Amendment Subcommittee [ad hoc committee or organization assigned a proposed amendment] shall report its recommendation to the Board [within forty-five (45) days after the proposed amendment is submitted to that committee or organization] 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, or 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.


The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 Institutional

6.1.1 IFC, Chapter 2, Section 202, Educational Group E, Daycare is amended as follows: On line three delete the word “five” and replace it with the word “four”.

6.1.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following: On line nine add “type I” in front of the words “assisted living facilities”.

6.1.3 IFC, Chapter 2 Section 202, Institutional Group I-2 is amended as follows: On line three delete the word “five” and replace it with the word “three.” On line eight after the words “detoxification facilities” delete the rest of the paragraph, and add the following: “ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.1.4 IFC, Chapter 2, Section 202, Institutional Group I-2. Child care facility is amended as follows: On line two delete the word “five” and replace it with the word “four”.

6.1.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities. Child care facility is amended as follows: On line three delete the word “five” and replace it with the word “four”. Also on line two of the Exception delete the word “five” and replace it with the word “four”.

6.2 Record Drawings

6.2.1 IFC, Chapter 9, Section 901.2.1 is amended to add the following: The code official has the authority to request record drawings ("as built") to verify any modifications to the previously approved construction documents.

6.2.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as built") that document all aspects of a fire protection system as installed.

6.3 Automatic Fire Sprinkler Systems

6.3.1 IFC, Chapter 9, Section 903.2.5 is deleted to include the exception and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

6.4.1 Class K Portable Fire Extinguishers

6.4.1.1 [IJ] IFC, Chapter 9, Section [1006.2.7. 1997 edition] 1006.4, and NFPA Standard 10, Section 2-3.2, 1998 edition, is deleted and replaced with the following:

[a.] 6.4.1.1 Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

[b.] 6.4.1.2 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B-C, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use until July 1, 1999, and then shall be replaced with a Class K rated portable fire extinguisher in the kitchen area to provide protection to hazards other than the commercial food heat-processing oils and cooking media.

6.5 Retroactive Installations of Automatic Fire Alarm Systems in Existing Buildings

6.5.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.6, 907.3.1.7, 907.3.1.8 and 907.3.1.9 are deleted.

6.6 Door Closures/Backflow Protection

6.6.1 IFC, Section 1111.3.2 Operation. Add the following Exception: In Group E Occupancies, Divisions 1 and 2, door
closures may be of the friction hold-open type on classroom doors only. The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-36-707(41).

6.7 Exit Signs

6.7.1 IFC, Chapter 10, Section 1003.2.10 is amended to add the following section: 1003.2.10.1 Floor-level exit signs. Where exit signs are required in Section 1003.2.10.1, additional approved exit signs that are internally or externally illuminated, photo luminescent or self-luminous shall be provided in all corridors serving guest rooms of R-1 occupancies and amusement building exits. The bottom of such signs shall not be less than six inches (152mm) nor more than 8 inches (203mm) above the floor level and shall indicate the path of travel. For exit and access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign within eight inches (203mm) of the door frame.

6.31.6.8 Fireworks

6.8 IFC, Chapter 33, Section 2409.1.13 is amended to [insert]add the following Exception: [4]. The use of fireworks for display and retail sale is allowed as set forth in the "Utah Fireworks Act," as adopted in UCA 53-7-220 and Title 11, Chapter 3, UCA 11-3-1.

6.9 Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3404.4.3 is amended as follows: Delete 3403.6 on line three and replace it with 3403.4.

6.46.10 Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 8212.12[3809.12, is [deleted and replaced with NFPA Standard 58, Section 5-4.1, 1995 edition]amended as follows: Delete 20 from line three and replace it with 10.

[R710-9.7. Publications of Amendments to the Uniform Fire Code]

7.1 The division shall publish a list of amendments to the UFC that have been granted by the Board.

7.2 The division shall make available to any person or agency copies of these amendments upon request, and may charge a reasonable fee for multiple requests from a person or agency in accordance with the provisions of UCA, Section 63-2.

[R710-9.8. Local Ordinances]

8.1 The legislative body of a political subdivision shall provide to the Board within forty-five (45) days after passage, a copy of any ordinances enacted that are more restrictive than the adopted code.

8.2 The division shall maintain an indexed copy of these ordinances for the Board.

8.3 The division shall publish an indexed list of these ordinances that have been made by political subdivisions.

8.4 The division shall make available to any person or agency copies of these ordinances upon request, and may charge a reasonable fee for multiple requests from a person or agency.

[R710-9.7. Fire Advisory and Code Analysis Committee]

7.1 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.

7.2 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:

7.2.1 A member of the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal from a local fire department.

7.2.4 A fire inspector or fire officer involved in fire prevention duties.

7.2.5 A member appointed at large.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 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.

7.5 The Council shall select one of 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.

7.6 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.

R710-9.8. Fire Service Education Administrator and Fire Education Program Coordinator

8.1 There is created by the Board a Fire Service Education Administrator for the State of Utah. This Administrator shall be the State Fire Marshal.

8.2 The Administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

8.2.1 The Administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

8.3 The Administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

8.4 The Administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

8.5 The Administrator shall as directed by the Board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

8.6 The Administrator shall oversee the Fire Department Assistance Grant program by completing the following:

8.6.1 Insure that a broad based selection committee is impaneled each year.

8.6.2 Compile for presentation to the Board the proposed grants.

8.6.3 Receive the Board's approval before issuing the grants.

8.7 The Administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, insure completion of agreements and contracts, and insure that payments on agreements and contracts are completed expeditiously.

8.8 The Administrator shall report to the Board at each regularly scheduled Board meeting the current status of fire service education statewide. The Administrator shall present any proposed
changes in fire service education to the Board, and receive direction and approval from the Board, before making those changes.

8.9 To assist the Administrator in statewide fire service education there is hereby created a Fire Education Program Coordinator.

8.10 The Coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

8.11 The Coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The Coordinator shall work with the Academy Director to update the Strategic Plan and keep it current to the needs of the fire service.

8.12 The Coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the Administrator.

8.13 The Coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

8.14 The Coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the Council Chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the Board is kept informed of the Training Council’s decisions.


9.1 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.

9.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be conducted by the SFM, or his authorized deputies, and the LFA.

9.3 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.

9.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect:

(4a)9.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.
(4b)9.4.2 Public and private schools.
(4c)9.4.3 Privately owned colleges and universities.
(4d)9.4.4 Institutional occupancies as defined in Section 9-2 of this rule.
(4e)9.4.5 Places of assembly as defined in Section 9-2 of this rule.

9.5 The Board shall require prior to approval of a grant the following:

(4a)9.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.
(4b)9.5.2 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.


10.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

10.2 This Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve three year terms, and shall consist of the following members:

(4a)10.2.1 (a member of)Representative from the Utah State Fire Chiefs Association.
(4b)10.2.2 (a member of)Representative from the Utah State Firemen’s Association.
(4c)10.2.3 (a member of)Representative from the [Utah]Fire Marshal's Association of Utah.
(4d)10.2.4 [as]Specialist in hazardous materials representing the Hazardous Materials Institute.
(4e)10.2.5 [as]Fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.
(4f)10.2.6 [as]Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.
(4g)10.2.7 [as]Representative from the Utah State Fire Service Certification Council.
(4h)10.2.8 [as]Representative from the fire service that sits on the Utah State Emergency Medical Services Committee.
(4i)10.2.9 [as]Representative from the Utah Fire [as]Training Officers [as]Association or a training officer recommended by the Fire Academy.

10.3 The Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. The majority of the Council shall be present to constitute a quorum.

10.4 The Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve 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. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

10.5 If a council member has two or more unexcused absences during a 12 month period, from regularly scheduled Council meetings, it is considered grounds for dismissal pending review by the Board. The [ Liaison]Coordinator shall submit the name of the Council member to the Board for status review.

10.6 A member of the Council may have a representative of their respective organization sit in proxy of that member, if submitted in writing and approved by the [ Liaison]Coordinator prior to the meeting.

10.7 The Chair or Vice Chair of the Council shall report to the Board the activities of the Council at regularly scheduled Board meetings. The [ Liaison]Coordinator may report to the Board the activities of the Council in the absence of the Chair or Vice Chair.

10.8 The Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

11.1 There is created a Fire Prevention Board [Budget ]Sub-Committee known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittee's membership [whom makeup] shall be appointed from members of the [Utah Fire Prevention] Board.

11.2 Membership on the Sub-Committee shall be by appointment of the [Fire Prevention] Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

11.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

[11.4 The Sub-Committee shall review the Academy's budget to ensure that the budget is being properly dispensed according to the contract, shall review the proposed budget for the next contract year, and report their findings to the Board.]


12.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

12.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three years term.

12.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

12.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

12.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

12.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal’s Office and the Utah Fire and Rescue Academy.

R710-9-13. [Utah Fire and Rescue Academy Strategic Plan, Utah Fire and Rescue Academy] and Fire Academy Liaison.

[13.1 The Utah Fire and Rescue Academy Strategic Plan shall be the document used each year by the Board to analyze the continuing mission, short and long range goals, and overall objectives of the Utah Fire and Rescue Academy.

13.2 The proposed Academy contract shall be developed using accepted budgetary practices and shall parallel the established overall objectives of the Plan.

13.3 The Board shall direct the Liaison to coordinate with all interested fire officials, fire organizations, and the Academy, the updating of the Plan every two years beginning in the year 2000.

13.4 The Board shall review each new edition of the Plan to ensure that the Plan is acceptable and satisfies the changing training needs of the fire service.

13.5 A copy of the Plan shall be kept on file at the State Fire Marshal’s Office and the Utah Fire and Rescue Academy.]
The proposed Academy contract shall be reviewed by the Liaison for its compliance with the Utah Fire and Rescue Academy Strategic Plan and accepted budgeting practices. The Liaison shall report to the Sub-Committee and the Board the findings of this review.

14.1 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.
14.2 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 occupancies listed in the Fire Prevention Law.
14.3 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.
14.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.
14.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

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.

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.

17.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.
17.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the UFC, the appealing party may petition the Board to act as the board of appeals.
17.3 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.
17.4 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 63-46b-3.
17.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.
17.6 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 63-46b-5(i).

17.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.
17.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, law
January 16, 2004
January 2, 2002
Notice of Continuation June 19, 1997
53-7-204

Workforce Services, Employment Development
R986-100
Employment Support Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE No.: 24240
FILED: 11/15/2001, 13:06

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make the rule consistent with Department practice.

SUMMARY OF THE RULE OR CHANGE: Section R986-100-111: The Department has never required proof of relationship for child care cases and is adding to the rule its long-standing practice. The parent is the client of the Department and not the child, so relationship of the child is immaterial for eligibility purposes. Section R986-100-123: This change is to provide an adequate length of time to clients when there is a delay on the part of the Department in making an eligibility determination. For instance, if a client applies for assistance on May 1st, but because verification and additional information is needed, the Department cannot make a decision for 60 days, and the application is denied. The decision denying the application is “effective as of May 1.” Because the decision and, hence, the notice was not sent out until 60 days later, the client’s appeal time is unfairly shortened. The Department has always allowed appeals within 90 days of the action, so this change does not change the current procedure.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 35A-3-101 et seq., 35A-3-301 et seq., and 35A-3-401 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program and there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This rule does not apply to local government and therefore there are no costs or savings to local government.
OTHER PERSONS: This change will have no effect on other persons as the Department has already been following these procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. These are mostly federally-funded programs, and the money is within current Department budgets to pay any costs which might be associated with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on 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 at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton.wsadmpo@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Robert C Gross, Executive Director

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-111. How to Apply For Assistance.
(1) To be eligible for assistance, a client must complete and sign an application for assistance.
(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:
   (a) property or other assets owned by all individuals included in the household unit;
   (b) insurance owned by any member of the immediate family;
   (c) income available to all individuals included in the household unit;
   (d) a verified SSN for each household member receiving assistance. If any household member does not have an SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for an SSN is denied for a reason that would not be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;
   (e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;
   (f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and
   (g) a release of information, if requested, which would allow the Department to obtain information from otherwise protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-123. The Right To a Hearing and How to Request a Hearing.
(1) A client has the right to a review of an adverse Department action by requesting a hearing.
(2) A client must request a hearing in writing or orally within 90 days of the effective date of the action with which the client disagrees. Any oral request for a hearing will be reduced to writing by the Department and the client will be requested to sign the request.
(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.
(4) The request for a hearing can be made at the local office or the Division of Adjudication.
(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.
(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.
(7) If the appeal involves an overpayment, the portion of the appeal which involves an overpayment will be referred to ORS.

KEY: employment support procedures
[October 2, 2000] 2002
35A-3-101 et seq.
35A-3-301 et seq.
35A-3-401 et seq.

Workforce Services, Employment Development
R986-200
Family Employment Program
NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24241

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To correct errors in the rule and make them conform to State law and reflect Department practice.

SUMMARY OF THE RULE OR CHANGE: Section R986-200-210: Removes the reference to the Workforce Reentry Program which was eliminated from state law in 2000. The change is necessary to make the rules conform to state law. Section R986-200-213: Department policy has always required that a minor parent be self-sufficient for a year in addition to having not lived with his or her parents during that year in order to be exempt from the requirements of this rule. The reference to self-supporting was inadvertently left out of the rule when it was originally drafted. Section R986-200-236: Corrects a numbering error in the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-301 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program so there will be no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This rule does not apply to local government and therefore there are no costs or savings to local government.
❖ OTHER PERSONS: There will be no costs associated with these changes to any person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. This is a federally-funded program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no impact on businesses. This is an entirely federally-funded program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton.wsadm po@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Robert C Gross, Executive Director

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:
(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.
(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.
(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.
(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:
(a) an expected outcome;
(b) an anticipated completion date;
(c) the number of participation hours agreed upon per week; and
(d) a definition of what will constitute satisfactory progress for the activity.
(4) Each activity must be directed toward the goal of increasing the household's income.
(5) Activities may require that the client:
(a) obtain immediate employment. If so, the parent client shall:
(i) promptly register for work and commence a search for employment for a specified number of hours each week; and
(ii) regularly submit a report to the Department on:
(A) how much time was spent in job search activities;
(B) the number of job applications completed;
(C) the interviews attended;
(D) the offers of employment extended; and
(E) other related information required by the Department.
(b) participate in the Workforce Reentry Program described in 25A-3-205.
(c) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma:
(d) obtain education or training necessary to obtain employment;
(e) obtain medical, mental health, or substance abuse treatment;
(f) resolve transportation and child care needs;
(g) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;
(h) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or
(i) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.
(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for financial assistance.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.


(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known; or

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home; or

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self-supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.


(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, including payments from Job Corps and Americorps living allowances, except Americorps Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) severance pay, including the cash out of vacation, holiday, and sick pay;

(h) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(i) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry;

(j[k]) training incentive payments and work allowances; and

(k[l]) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

KEY: family employment program

[July 1, 2001] 2002
35A-3-301 et seq.
RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To make the Working Toward Employment (WTE) program consistent with all other financial assistance programs administered by the Department.

SUMMARY OF THE RULE OR CHANGE: WTE did not have a lifetime limit. With the advent of lifetime limits for the Family Employment Program (FEP) and the Family Employment Program Two Parent (FEPTP), the Department determined that in order to make the programs consistent, a lifetime limit for WTE should be written into rule. The Department is also concerned about limited funding for this program. The Department also determined that it was unfair to count months when an individual is sanctioned toward the lifetime limit. This change makes the General Assistance (GA) and WTE programs consistent with all other programs having a lifetime limit.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 35A-3-401 and 35A-3-402

ANTICIPATED COST OR SAVINGS TO:
✓ THE STATE BUDGET: It is unknown how many people will be affected by this lifetime limit. There could be a savings of a few thousand dollars a year.
✓ LOCAL GOVERNMENTS: This rule does not apply to local government, therefore there are no costs or savings.
✓ OTHER PERSONS: It is anticipated that very few people receiving WTE assistance will ever reach the lifetime limit, but if they do there will be a cost to those people. The people served by the WTE program have no children and are able-bodied.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change. There are no fees associated with this change. It will no cost anyone any sum to comply with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no impact on 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: Robyn Spongberg at the above address, by phone at 801-526-9651, by FAX at 801-526-9244, or by Internet E-mail at wsadmpo.rspongb@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Robert C Gross, Executive Director

R986. Workforce Services, Employment Development.
R986-400-409. Time Limits.

(1) An individual cannot receive GA financial assistance for more than 24 months out of any 60-month period. Months which count toward the 24-month limit include any and all months during which a client:
	(a) received a full or partial financial assistance payment beginning with the month of March, 1998;
	(b) was ineligible due to the client's failure to comply with the requirements of an employment plan under R986-400-102).

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

R986-400-456. Time Limits.

(1) An individual cannot receive WTE financial assistance for more than seven months out of any 18-month period.

(2) In addition to the seven months out of any 18-month period time limit, there is a 24-month life time limit for WTE financial assistance.

(3) Months which count toward the seven month time limit and the 24-month limit include any and all months during which a client received a full or partial financial assistance payment.

(4) There are no exceptions or extensions to the time limit. (2) If WTE financial assistance is terminated due to the time limit, advanced written notice is not required.

KEY: general assistance, working toward employment
(1) January 1, 2001 (2) 35A-3-401
(3) 35A-3-402

▼ ▼ ▼

Workforce Services, Employment Development

R986-700
Child Care Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR File No.: 24248

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To correct errors in the rule, make the rule conform to Department practice, provide a procedure for two-party checks, and allow the release of limited information to the child care provider.

SUMMARY OF THE RULE OR CHANGE: Sections R986-700-701 and R986-700-703: to allow the Department to provide limited information to the child care provider when payment is
delayed because of the failure of the client to provide the Department with necessary information. Section R986-700-702: the Department has never required that a child receiving child care meet the citizenship or alienage requirements. The Department considers the client to be the parent and not the child. This change also includes homeless children and Family Employment Program (FEP) or Family Employment Program Two Parent (FEPTP) eligible children in the prioritization in the event it is necessary to prioritize cases. This has always been Department practice. The Department has also changed the section whereby only the Division of Services for People with Disabilities could identify special needs children and to allow the Department to use other entities if needed. Section R986-700-709: this change is to allow the Department to obtain underlying medical documentation regarding disabilities of individuals receiving SSI and VA benefits. This change corrects a numbering error in the rule number itself. Section R986-700-716: this change merely corrects a numbering error.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-3-310

**ANTICIPATED COST OR SAVINGS TO:**

- **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- **LOCAL GOVERNMENTS:** This rule does not apply to local government and therefore there are no costs or savings to local governments.
- **OTHER PERSONS:** There are no costs or savings to any other persons as these changes merely reflect current Department practices of long standing.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes. This is a federally-funded program and the money is within current Department budgets to pay any costs associated with this change.

**COMMENTs BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change will have no impact on business. This is an entirely federally funded program.

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

- **WORKFORCE SERVICES EMPLOYMENT DEVELOPMENT**
- **140 E 300 S**
- **SALT LAKE CITY UT 84111-2333, or at the Division of Administrative Rules.**

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton.wsadmpo@state.ut.us

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002**

**AUTHORIZED BY:** Robert C Gross, Executive Director

---

**R986. Workforce Services, Employment Development.**

**R986-700. Child Care Assistance.**

**R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.**

1. The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

2. Rule R986-100 applies to CC except as noted in this rule.

3. Applicable provisions of R986-200 apply to CC, except as noted in this rule.

**R986-700-702. General Provisions.**

1. CC is provided to support employment.

2. CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

   a. parents;
   b. specified relatives; or
   c. clients who have been awarded custody or appointed guardian of the child.

3. Child care is only provided for children living in the home and only during hours when neither parent is available to provide care for the children.

4. If a client is eligible to receive CC, the following children, living in the household, are eligible:

   a. children under the age of 13; and
   b. children age 13 to 18 years if the child is:
      i. physically or mentally incapable of self-care as determined by a medical doctor, doctor of osteopathy or licensed or certified psychologist; and/or
      ii. under court supervision.

5. The children receiving care do not need to meet the citizenship or alienage requirements of R986-200-203. The parent, guardian or specified relative does need to meet those requirements.

6. Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services.

7. The amount of CC might not cover the entire cost of care.

---
(218) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(219) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(2110) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(4111) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC.

(4112) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.


In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) In addition to the requirements for reporting other material changes that might affect eligibility, outlined in R986-100-113, a client is responsible for reporting a change in the client's need for child care, a change in the client's child care provider, and a change in the amount a provider charges for child care, to the Department within 10 days of the change.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days the decrease will be made effective beginning the next month and sums received in the month in which the change was reported will not be treated as an overpayment. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) Any client receiving any type of CC who is not receiving full court ordered child support must cooperate with ONS in obtaining child support from the absent parent. Child support payments received by the client count as unearned income. If a client's case was closed for failure to cooperate with ONS it cannot be reopened until ONS notifies the Department that the client is cooperating.

(9) All clients receiving CC must cooperate in good faith with the Department in establishing paternity unless there is good cause for not cooperating.

(10) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(11) The Department may also release general information to a provider regarding the status of or a delay in the payment of CC.

R986-700-709. Employment Support (EC) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC.

(a) If the household has only one parent, the parent must be employed a minimum of 15 hours per week.

(b) If the family has two parents, CC can be provided if:

(i) one parent is employed a minimum of 35 hours per week and the other parent is employed a minimum of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(ii) one parent is employed and the other parent cannot work or provide care because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The individual claiming incapacity must [be receiving SSL be 100 percent disabled by the VA or ] provide proof, by way of a report signed by a medical doctor, doctor of osteopath or licensed/certified psychologist, which states that:

(A) the parent cannot work; and

(B) the incapacity prevents the parent from caring for a child; and

(C) the incapacity is expected to last at least 30 days.

(2) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard.

(3) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income and assets must be counted to establish eligibility, except a specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income and assets of the specified relatives in the household must be counted;
(b) what is counted as income and assets except one automobile is exempt for each household member participating in work and/or training if it is needed for employment, used for transportation to and from that work and/or training or if the client is living in the automobile. The asset limit for ES CC is $8,000 after allowable deductions; and

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;
(b) court ordered and verified child support and alimony paid out by the household;
(c) $100 for each person with countable earned income; and
(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, 56 percent of the state median income.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(3) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent; or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(4) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.


(1) An overpayment occurs when a client or provider received CC for which they were not eligible.

(2) If the Department has reason to believe that a CC overpayment has occurred, a referral for collection will be made to ORS.

(3) If ORS determines that the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;
(b) for a period of two years for the second occurrence of fraud; and
(c) for life for the third occurrence of fraud.

(4) If a client receives an overpayment but was not at fault in creating the overpayment, the client will be responsible for repayment but there is no disqualification or ineligibility period.

(5) If ORS determines that the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (3) above, the client will be given an opportunity to repay the overpayment without a disqualification or ineligibility period for the first occurrence. If there is a second fault overpayment for reasons other than fraud in (3) above and the first overpayment has not been paid off, the client will be ineligible for CC until both overpayments have been satisfied. If the second overpayment occurred after the first overpayment was repaid in full, the second overpayment will not result in disqualification or ineligibility.

(6) If the client does not cooperate with ORS in its investigation or collection efforts, the Department will terminate CC upon notification from ORS that the client is not cooperating.

(7) These disqualification and ineligibility periods are in lieu of, and not in addition to, the disqualification periods found in R986-100-117.

(8) If the Department has reason to believe an overpayment has occurred, a referral to ORS has been made, and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined by ORS.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home; provided the client makes at least minimum wage from the at home work, and the client has a need for child care
services. The client must choose a provider setting outside the home.

(6) On a case-by-case basis, the Department may fund child care for children with disabilities at a higher rate if the needs of the child and provider necessitate. To qualify for the higher rate DSPD or another Department approved entity must first determine that the child care provider has additional ongoing costs in caring for the child. The Department may set different income eligibility criteria for clients with children determined to need consideration under this paragraph. The income eligibility rate is available at all Employment Centers.

KEY: child care
JULY 1, 2001 [2002]
35A-3-310

Workforce Services, Employment Development
R986-900
Food Stamps

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24250
FILED: 11/15/2001, 14:09

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To delineate an option the Department failed to include in the original rule.

SUMMARY OF THE RULE OR CHANGE: This rule adds to the list of options chosen by the Department and allowed by federal law. Federal law provides two different methods for counting income of aliens. This identifies the option always used by the Department.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-103

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This rule does not apply to local government and therefore there are no costs or savings to local government.
❖ OTHER PERSONS: There are no costs or savings to any person as this rule change merely identifies the option the Department has always used.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change. There are no fees associated with this change. It will no cost anyone any sum to comply with these changes. This is a federally-funded program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on business. This is an entirely federally-funded program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9845, by FAX at 801-526-9211, or by Internet E-mail at spixton.wsadmto@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Robert C Gross, Executive Director

R986. Workforce Services, Employment Development.

The Department administers the food stamp program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to adopt a standard utility allowance (SUA) for utilities. The standard utility allowance is updated annually and is available upon request from the Department. The Department allows clients to choose between using the SUA or actual utility expenses as a deduction from income when determining the food stamp benefit amount. The household must choose between using the SUA or actual expense at the time of application. The household may change from one to the other only at the time of recertification or if the household moves to a different place of residence.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.
(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-337 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(1) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(e)(3)(ii)(A).

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) If a client fails to appear for the scheduled face-to-face interview required by 7 CFR 273.2 (e)(3), the Department is not required to attempt to schedule another interview unless the client contacts the Department and requests another interview. If the client misses two scheduled interviews and does not express an interest in pursuing the application, the application can be denied without waiting until the 30th day as required by 7 CFR 273(g)(3).

(c) If a client does not provide initial verification as requested within ten days of the interview, the Department can deny the household's application at the expiration of the ten days and is not required to wait until the 30th day following the date of application.

(d) The Department is not required to conduct a face-to-face interview for each recertification period as required by 7 CFR 273.14(b)(3)(i), provided that at least one face-to-face interview, in conjunction with recertification, is conducted each year.

(e) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.


(g) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(h) FEP and FEPT clients may opt to have their food stamp benefits paid as cash. This waiver will expire on December 31, 2000.

(i) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(j) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

KEY: food stamps, public assistance
July 1, 2001 | 2002
35A-3-103

Workforce Services, Workforce Information and Payment Services
R994-306-101
Reduction in Force Separations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 24252
FILED: 11/15/2001, 15:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to explicitly state that a job separation due to a reduction in the workforce will result in an employer being liable for benefit charges and the worker eligible for benefits, regardless of the business conditions requiring the separation. The purpose is also to make it clear that this is the case even when the worker and employer agreed at the time of hire that the work would be temporary or seasonal. An existing rule states that a job separation is a discharge when the employer is the moving party in determining the date the employment ended. The Employment Security Act indicates that a claimant will be ineligible for benefits when the claimant has been discharged for just cause or for an act or omission in connection with employment, which was deliberate, willful, or wanton and adverse to an employer's rightful interest, if so found by the division. The division's rules indicate that just cause is established when a claimant's actions causing the discharge were culpable, the claimant knew or should have known the conduct the employer expected, and the conduct causing the discharge was within the claimant's control. When a claimant has been discharged due to a reduction in the workforce, the elements of just cause are not established and the claimant's discharge is not the result of an act or omission that was deliberate, willful, or wanton. The proposed rule simply states what is implied in the existing law and rules.

SUMMARY OF THE RULE OR CHANGE: Employers will be liable for charges and claimants will be eligible for unemployment insurance benefits when a claimant's job separation is due to a reduction in the workforce.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-306, and Subsections 35A-4-405(2)(a) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The proposed rule simply states the existing interpretation of the law and should generate no aggregate costs or savings to the State budget.
❖ LOCAL GOVERNMENTS: The proposed rule simply states the existing interpretation of the law and should generate no aggregate costs or savings to local government.
OTHER PERSONS: The proposed rule simply states the existing interpretation of the law and should generate no aggregate costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule simply states the existing interpretation of the law and should generate no additional compliance costs to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no added fiscal impact on businesses.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333,
or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton.wsadmpo@state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Robert C Gross, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-306 Charging Benefit Costs to Employers

When a worker is separated due to a reduction of the workforce, regardless of business conditions requiring the separation, the worker is eligible for benefits and the employer is liable for charges. This is true even if the separation is the end of a temporary assignment or seasonal employment and both parties agreed to the arrangement at the time of hire.

KEY: unemployment compensation, rates
[June 17, 1996]2002
35A-4-303
35A-4-306
35A-4-405(2)(a)
35A-4-502(1)(b)

Workforce Services, Workforce Information and Payment Services
R994-405-201
Discharge - General Definition

NOTICE OF PROPOSED RULE
(Amendment)
DAR File No.: 24253
FILED: 11/15/2001, 15:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to state that a job separation due to a reduction in the workforce is a discharge without just cause at the convenience of the employer. An existing rule states that a job separation is a discharge when the employer is the moving party in determining the date the employment ended. An existing rule also states that a claimant will be denied benefits when the claimant is discharged for just cause. Just cause is established when a claimant's actions causing the discharge were culpable, the claimant knew or should have known the conduct expected by the employer, and the conduct causing the discharge was within the claimant's control. When a claimant is discharged due to a reduction in the workforce, the elements of just cause are not established. This amendment simply states what is implied in the existing rules.

SUMMARY OF THE RULE OR CHANGE: A job separation due to a reduction in the workforce is a discharge without just cause at the convenience of the employer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-4-405(2)(a) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:
THE STATE BUDGET: The amended rule simply states the existing interpretation of the law and should generate no aggregate costs or savings to the State budget.
LOCAL GOVERNMENTS: The amended rule simply states the existing interpretation of the law and should generate no aggregate costs or savings to local government.
OTHER PERSONS: The amended rule simply states the existing interpretation of the law and should generate no aggregate costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amended rule simply states the existing interpretation of the law and should generate no additional compliance costs to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amended rule will have no added fiscal impact on businesses.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES

R994. Workforce Services, Workforce Information and Payment Services.
R994-405. Ineligibility for Benefits.
R994-405-201. Discharge - General Definition.
A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits shall be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the worker.
A reduction of force is considered a discharge without just cause at the convenience of the employer.

KEY: unemployment compensation, employment, employee's rights, employee termination
June 16, 2000
35A-4-502(1)(b)
35A-1-104(4)
35A-4-405

▼

End of the Notices of Proposed Rules Section
NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the Utah State Bulletin, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the Utah State Bulletin. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (······) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the Utah State Bulletin ends December 31, 2001. At its option, the agency may hold public hearings.

From the end of the waiting period through March 31, 2002, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the Utah State Bulletin. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Utah Code Section 63-46a-6 (2001); and Utah Administrative Code Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

Insurance, Administration
R590-203
Health Care Benefits-Grievance Review Process Rule

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 23814
Filed: 11/14/2001, 15:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule are a result of comments made during the second comment period.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule the word “grievance” has been changed to “adverse benefit determination.” Long-term care policies will now be included under the scope of this rule. Added a Definition Section which defined “Medical Necessity.” Clarified who shall conduct an independent review of an adverse benefit determination of medical necessity. The compliance date was changed to reflect that of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for the Administration and Enforcement; Claims Procedure, 29 CFR 2560.503-1. In the new Subsection R590-203-6(5)(e), the requirement for a maximum fee for an independent review was deleted. (DAR Note: This is the second change in proposed rule (CPR) for R590-203. The original new rule upon which the first CPR was based was published in June 15, 2001, issue of the Utah State Bulletin, on page 52. The first CPR upon which this second CPR is based was published in the September 15, 2001, issue of the Utah State Bulletin, on page 49. 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 first CPR, the second CPR, and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-203, and 31A-22-629; and 29 CFR 2560.503-1

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: The effects of these changes will have no additional impact over those already described in the first and second filing.

LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by the state government agency to which all fees are paid by its licensees.

OTHER PERSONS: Insurers who have not previously provided for independent reviews or contracted with independent reviewer/organizations, will have to do so which will result in increased cost to insurers and increased income to the independent reviewer/organization. Increased cost to insurers may be passed on to insurance consumers. Also, consumers will not be required to pay for an independent review.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Insurers who have not previously provided for independent reviews or contracted with independent reviewer/organizations, will have to do so which will result in increased cost to insurers and increased income to the independent reviewer/organization. Increased cost to insurers may be passed on to insurance consumers. Also, consumers will not be required to pay for an independent review.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Costs to insurers, employers, and their employees may be increased to cover the cost of an independent review. An independent review may cost anywhere between $500 to $1,500. This rule may increase business directed to independent reviewers/organizations.

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

INSURANCE ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@insurance.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM ON 12/31/2001

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
12/18/2001 at 10:00 AM, Room 1112, State Office Building (behind the Capitol), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-203-1. Authority.
This rule is specifically authorized by 31A-22-629(4) and 31A-4-116 which requires the commissioner to establish minimum standards for grievance review procedures. The rule is also promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to examine insurer records, files, and documentation is provided by 31A-2-203.

R590-203-2. Purpose.
The purpose of this rule is to ensure that health insurance provider's grievance review procedures for individual and

R590-203-3. Applicability and Scope.
This rule applies to all health insurance policies and health maintenance organization contracts, as defined by 31A-1-301 covering individual health benefit plans and employer benefit plans sold in the State of Utah and effective on or after January 1, 2001. [Long Term Care and.] Medicare supplement policies are not considered health insurance policies for the purpose of this rule.

(1) For the purposes of this rule: "Medical Necessity" means a medical question-of-fact or the determination that an intervention recommended by a treating health care professional is the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective in improving health outcomes. For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence. For established interventions, the effectiveness shall be based on scientific evidence, professional standards and expert opinion.

R590-203-5. Adverse Benefit Determination Reviews.
(1) An insurer's adverse benefit determination review procedure shall be compliant with the [grievance] adverse benefit determination review requirements set forth in the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: [Claims Procedure.] Claims Procedure, 29 CFR 2560.503-1, effective January 20, 2001. This document is incorporated by reference and available for inspection at the Insurance Department and the Department of Administrative Rules.
(2) The federal regulation applies to claims filed on or after January 1, 2002, except claims filed under an individual or group health plan on or after the first day of the first plan year beginning on or after July 1, 2002, but no later than January 1, 2003.
(3) An insurer with an established grievance insurer's adverse benefit determination appeal board or body shall include at least one consumer representative that shall be present at every meeting.
(4) An insurer shall be in compliance with Section R590-203-5 by January 1, 2002.

(1) An insurer shall provide an independent review procedure as a voluntary option for the resolution of adverse benefit determinations of medical necessity.
(2) [A person.] An independent review procedure shall be conducted by an independent review organization, person, or entity other than the insurer, the plan's fiduciary, the employer, or any employee or agent of any of the foregoing, shall conduct an independent review procedure, that do not have any material professional, familial, or financial conflict of interest with the health plan, any officer, director, or management employee of the health plan, the enrollee, the enrollee's health care provider, the provider's medical group or independent practice association, the health care facility where service would be provided and the developer or manufacturer of the service being provided.
(3) [The submission to an independent review procedure is purely voluntary and left to the discretion of the claimant.] Independent review organizations shall be designated by the insurer, and the independent review organization chosen shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.
(4) Independent review organizations shall be designated by the insurer. [The submission to an independent review procedure is purely voluntary and left to the discretion of the claimant.]
(5) An insurer's voluntary independent review procedure shall:
(a) waive any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a dispute of medical necessity to a voluntary level of appeal provided by the plan;
(b) agree that any of limitations or other defense based on timeliness is tolled during the time a voluntary appeal is pending;
(c) allow a claimant to submit a dispute of medical necessity to a voluntary level of appeal only after exhaustion of:
(i) an insurer's current internal claims review procedure until July 1, 2002; or
(ii) the appeals permitted under 29 CFR Subsection 2560.503-1(c)(2), of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulation for the Administration and Enforcement: Claims Procedure.
(d) upon request from any claimant, provide sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed decision about whether to submit a dispute of medical necessity to the voluntary level of appeal. This information shall contain a statement that the decision to use a voluntary level of appeal will not affect the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimants right to representation, the process for selecting the decision maker, and, if any, the circumstance that may affect the impartiality of the decision maker such as any financial or personal interests in the result or any past or present relationship with any party to the review process; and
(e) require a maximum fee of $25 payable by the insured when an independent review is requested. The fee must be waived if the insured demonstrates they are indigent or under financial hardship.
(6) Standards for voluntary independent review:
(a) The insurer's internal [grievance] adverse benefit determination process must be exhausted unless the insurer and insured mutually agree to waive the internal process.
(b) Any adverse benefit determination of medical necessity may be the subject of an independent review.
(c) The claimant has 180 calendar days from the date of the final internal review decision to request an independent review.
(d) The fee is paid or waived.
(e) An insurer shall use the same minimum standards and times of notification requirement for an independent review that are used for internal levels of review, as set forth in 29 CFR Subsection 2560.503-1(h)(4)(3)(f)(2) and (j).
(7) An insurer shall provide an expedited review process for cases involving urgent care claims.
(8) A request for an expedited review of an adverse benefit determination of medical necessity may be submitted either orally or in writing [and require]. The expedited review requires:

(a) all necessary information, including the plan’s original benefit determination be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method;

(b) an insurer to notify the claimant of the benefit review determination, as soon as possible, taking into account the medical urgency, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination; and

(c) an insurer to use the same minimum standard for timing and notification as set forth in 29 CFR Subsection 2560.503-1(h), 503-1(f)(2)(i), 503-1(j).

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** As a result of comments received during the previous hearing and comment period, the department has determined further changes needed to be made to the rule.

**SUMMARY OF THE RULE OR CHANGE:** Sections R590-211-1, R590-211-2, and R590-211-4 eliminate the requirement for a liability insurer to give notification to an underinsured motorist when their insured’s liability limits have been tendered. The changes to Section R590-211-6 allows the commissioner to begin enforcing the rule 45 days after the rule is made effective to give the insurance industry 45 days to come into compliance with the requirements of the rule. (DAR Note: This is the second change in proposed rule (CPR) for R590-211. The original new rule upon which the first CPR was based was published in June 15, 2001, issue of the Utah State Bulletin, on page 54. The first CPR upon which this second CPR is based was published in the September 1, 2001, issue of the Utah State Bulletin, on page 37. 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 first CPR, the second CPR, and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 31A-2-201 and 31A-22-305

**ANTICIPATED COST SAVINGS TO:**

- **THE STATE BUDGET:** The changes to the rule will have no impact on the department or the general fund. No additional work will be required of the department and no form or rate filings will be required of the insurer, which if required would result in a filing fee paid to the department.

- **LOCAL GOVERNMENTS:** This rule will not affect local government. The rule is regulated by the state government agency to which all fees are paid by its licensees.

- **OTHER PERSONS:** The basic change made to the rule eliminates the requirement of the liability insurer to give notice to the underinsured motorist when the liability limit has been tendered. Liability insurers are not required to do this now so there would be no fiscal impact on them should this rule be put into effect.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The basic change made to the rule eliminates the requirement of the liability insurer to give notice to the underinsured motorist when the liability limit has been tendered. Liability insurers are not required to do this now so there would be no fiscal impact on them should this rule be put into effect.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There would be no fiscal impact on the insurance industry and none on local businesses.

---

Insurance, Administration

**R590-211**

Underinsured Motorist Insurer Notification Ruling

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 23813

Filed: 11/09/2001, 12:48
R590-211-5. Severability.
If any provision or clause of this rule or its application to any person or situation is held invalid, such 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.

R590-211-6. [Compliance] Enforcement Date.
This rule is in effect on the date stated in the Notice of Effective Date form relating to this rule that the department files with the Division of Administrative Rules (the "effective date"). The effective date will follow a period of 45 days during which interested parties will have time to prepare to be in compliance with this rule. It will also be the date on which the department will begin enforcing this rule. The Notice of Effective Date is published in the "Utah State Bulletin", a publication of the Division of Administrative Rules. The "Utah State Bulletin" is found at the website, http://www.rules.state.ut.us/. In addition, the effective date may be found at the department's website, http://www.insurance.state.ut.us/ by clicking on INDUSTRY RESOURCES and then RULES and scrolling down to the appropriate reference to the rule. The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

KEY: insurance
[2004]2002
31A-2-201
31A-22-305

Insurance, Administration

R590-212
Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 24050
Filed: 11/13/2001, 17:02

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The additional changes being made in this rule are a result of comments received during a hearing and comment period.

SUMMARY OF THE RULE OR CHANGE: In Section R590-212-1: due to the deletion of Section 31A-2-204 from the Authority Section the last sentence in this section also needs to be eliminated. In Section R590-212-4: due to the fact that the term "Account" was not used in any other section of the rule, it is being eliminated from the definition section. In Subsection R590-212-5(1): the code reference in this section is being corrected due to a typo, the reference to "the Utah Insurance code" is being eliminated to comply with Rulemaking guidelines, and the term "trust beneficiary" is being eliminated and replaced with the definition of this term for clarification purposes. In Subsection R590-212-5(5) is the only...
substantive change being made. In the second sentence the words "and is able" are being eliminated making the requirement for the depositor more strict. Subsection R590-212-5(6) is just a code reference correction. It does not change the intent or meaning of the rule. (DAR Note: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the October 1, 2001, issue of the Utah State Bulletin, on page 22. 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 new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-23-310

ANTICIPATED COST OR SAVINGS TO:

✝THE STATE BUDGET: The changes will have no impact on the department or the general fund. No additional work will be required of the department and no form or rate filings will be required of insurers, agents, or agencies.

✝LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by the state government agency to which all fees are paid by its licensees.

✝OTHER PERSONS: The additional changes to this rule will have no fiscal impact on insureds, agents, agencies, or consumers. The only substantive change in Subsection R590-212-5(5) which clarifies that the depositor will reimburse, not just be able to reimburse, the trust beneficiary for any decline in value below par of the funds deposited.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The additional changes to this rule will have no fiscal impact on insureds, agents, agencies or consumers. The only substantive change in Subsection R590-212-5(5) clarifies that the depositor will reimburse, not just be able to reimburse, the trust beneficiary for any decline in value below par of the funds deposited.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The additional changes to this rule will have no fiscal impact on insurers, agents, agencies, or consumers. The changes merely correct typos, comply with rulemaking requirements, and are for clarification purposes only.

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

INSURANCE ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, or by FAX at 801-538-3829, or by Internet E-mail at jwhitby@insurance.state.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/31/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2002

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-212. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits.

R590-212-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(1)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23-310(2)(b). [The authority to require a timely response to the department is provided by Section 31A-2-204.]

R590-212-2. Purpose.

This rule specifies the characteristics of a depository account that may be used by a title insurance agency to deposit trust funds.


This Rule applies to all title insurers, title insurance agencies and title insurance agents and all employees, representatives and any other party working for or on behalf of said entities, whether as a full time or part time employee, or as an independent contractor.

R590-212-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23-102 and the following:

(1) "Account" means a federally insured deposit account.
(2) "Demand deposit account" refers to a federally insured deposit account from which withdrawals may be made by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentation of the check or other withdrawal request.
(3) "Depositor" refers to a title insurance agency that has deposited, in a qualifying trust account, funds it holds in trust in connection with a real estate transaction.
(4) "Sweep account" refers to a demand deposit account subject to an agreement authorizing the bank to withdraw from the account funds exceeding a specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand account, when needed, to pay checks presented for payment or other request for withdrawal.
(5) "Trust account" means an account denominated as a trust account in which the depositor is trustee.
R590-212-5. Account Requirements.

(1) Authority to Retain Earnings on Funds Held in Trust. Subsection 31A-23-[302]{307}(2) [of the Utah Insurance code] permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the contract between the trustee and the trust beneficiary, the person on whose behalf the funds are held.

(2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds held in trust, comply with the requirements of this rule.

(3) Records Required. Each title insurance agency must retain adequate records of all deposits in a trust account, including those utilizing a sweep feature, to establish individual account balances for all persons whose funds are held in trust.

(4) Qualified Accounts. Funds subject to this rule must be deposited or held in:

(a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or

(b) a sweep account if it meets all of the following qualifications:

(i) funds are initially deposited into a federally insured demand deposit account;

(ii) the bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase U.S. Government securities on behalf of the depositor that are held in a segregated account in the bank subject to a repurchase agreement with the bank; and

(iii) the bank is obligated and able to repurchase the securities or sell or redeem the shares or interest at any time at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

(5) Obligation of Depositor for Losses. A depositor may only deposit funds into a sweep account if it agrees [and is able] to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.

(6) Disclosure Obligation of Depositor. Any depositor who uses an account described in Subsection R590-212-5.[302](4)(b) must provide full written disclosure by the depositor to all persons on whose behalf the funds are deposited, explaining the characteristics and risks associated with that type of account.

R590-212-6. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.

R590-212-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such 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, title
200(4)[2]
31A-2-201
[31A-2-204]
31A-23-310

End of the Notices of Changes in Proposed Rules Section
Five Year Notices of Review and Statements of Continuation Begin on the Following Page.
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the Utah Administrative Code.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the Utah Administrative Code. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by Utah Code Section 63-46a-9 (1998).

Commerce, Administration
R151-14
New Automobile Franchise Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 24234
FILED: 11/14/2001, 15:33

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: The New Automobile Franchise Act, Utah Code Ann. Section 13-14-101 et seq., governs the distribution and sales of new motor vehicles through franchise arrangements, and regulates the relationship between franchisors and franchisees. Sections 13-14-104 and 13-14-105 authorize the Utah Motor Vehicle Franchise Advisory Board and the department to promulgate rules about registration of franchisees and franchisors, and about administrative proceedings before the advisory board.

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 received the following comments: (a) the definitions in Section R151-14-102 are duplicative of the definitions in the Utah Administrative Procedures Act (UAPA), Section 63-46b-1; (b) adjudicative proceedings should be designated as informal unless designated as formal by the Board or by demand of a party; (c) UAPA does not allow the Board to change the designation of an adjudicative proceeding on a case-by-case basis, but only allows conversion to a formal proceeding when applicable requirements are met; (c) Subsections R151-14-102(1), R151-14-104(2), R151-14-106(2) and R151-14-107(2) are unnecessarily duplicative; and (d) the Department should not attempt to correct errors in statutory drafting by rulemaking, but should instead seek to correct such drafting errors through the legislature (referring to Sections R151-14-201 and R151-14-203).

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to administer the registration of franchisees and franchisors, and to conduct administrative proceedings before the Board, and therefore, the rule should be continued. However, the Department intends to present to the Advisory Board a draft of a proposed rule change that will address the concerns raised by the public comments. If the Board approves the draft, a proposed rule change filing could follow.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6001, or by Internet E-mail at mmmedcalf@utah.gov

AUTHORIZED BY: Klare Bachman, Deputy Director

EFFECTIVE: 11/14/2001

---

Commerce, Occupational and Professional Licensing
R156-40
Recreational Therapy Practice Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 24192
FILED: 11/06/2001, 11:09

---
NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 40 provides for the licensure of recreational therapists. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-40-4(3) provides that the Board of Recreational Therapy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 40 with respect to recreational therapists.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in January 1998, the rule has only been amended once in July 1998. As a result of a rule filing made by the Division in January 1998, a March 4, 1998, rule hearing was held. The Division received a February 2, 1998, letter from David Howard, President, Utah Recreation Therapy Association, requesting some modifications be made to the proposed rule. As a result of the above written comment and numerous public comment offered during the March rule hearing regarding the training and supervision of therapeutic recreation technicians, the Division filed a change in proposed rule (CPR) filing in March 1998. The Division conducted another rule hearing on April 22, 1998, with respect to the additional changes made in the proposed rule. Prior to the rule hearing, the Division received numerous letters, approximately 90 letters, all dated March 10, 1998, and signed by various licensed recreational therapists. The Division also received written comments from M. Sydney Post, Noel Taxin, Shelly Oda, Breanne Harris, David Howard, Jena Smith, Amber Derr, and Jeanette Houston. As a result of the second rule hearing and numerous additional written comments received, the Division filed a second CPR filing in May 1998 with additional changes being made. The second CPR filing was finally made effective on July 16, 1998.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 40 with respect to recreational therapists.

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

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:
Lynn Bernhark at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at lbernhar@br.state.ut.us

AUTHORIZED BY: J. Craig Jackson, Director
EFFECTIVE: 11/06/2001

Environmental Quality, Solid and Hazardous Waste
R315-101
Cleanup Action and Risk-Based Closure Standards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24195
FILED: 11/08/2001, 09:20

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 19-6-105 requires that minimum standards be established for protection of human health and the environment, for the management, treatment, and disposal of solid and hazardous wastes, including closure of facilities and sites that handled such waste.

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 Division proposed changes to Rule R315-101 that were published in the April 1, 2001, Utah Bulletin. The following are summaries of comments received concerning those proposed changes.
Comment 1: Concurs with the proposed changes to Section R315-101-6 regarding the correction to contradictory language and the addition of "or equal to" to the "greater than" or "less than" language. Comment 2: Proposed changes will result in too much emphasis on ecological risk assessments. Comment 3: Proposed changes significantly narrow the circumstances where the Division would grant a waiver to conduct an ecological assessment. Comment 4: Recommends that the Executive Secretary approve, conditionally approve, or disapprove in writing the Certificate of Completion in Subsection R315-101-8(c). Comment 5: Recommended the actual land use exposure scenario (Subsection R315-101-5.2(b)(2)) be modified to require site-specific data instead of standard default variable values. Comment 6: Recommended the addition of a USEPA Region 8 Superfund guidance document to Subsection R315-101-5.1(a)(1) for risk-based screening.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to establish information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved.
Following are responses prepared by the Division and approved by the Utah Solid and Hazardous Waste Control Board regarding the comments received for proposed rule changes as identified in the summary of written comments above. To Comment 1: This comment agreed with the proposed rule change. To Comment 2: The Division does not concur with the comment. The methods used to assess ecological risks have substantially improved since Rule R315-101 was initially promulgated in 1994. While the methods for assessing ecological risks and the risk assessments are more sophisticated, the proposed rule changes do not reflect an increased emphasis on ecological resources. The proposed additional language to Section R315-101-6 reflects the Division's current practice. The Division believes that the proposed language will enhance clarity for staff members and facilities regarding the role of ecological assessments. The Division anticipates that this will result in assessments that are more efficient because they will be appropriately scoped to provide only the information necessary for decision-making. To Comment 3: The Division does not agree that the proposed changes to Section R315-101-6 will narrow the circumstances when the Executive Secretary would grant the waiver to conduct an ecological risk assessment. The part of the rule where a waiver is discussed, Subsection R315-101-5.3(a)(8), was not proposed for change. The Division is required to be equivalent with the USEPA in implementing the Resource Recovery and Conservation Act. The USEPA lacks provisions for a waiver for ecological assessments and has expressed concerns regarding the Division's waiver provision. The USEPA's concerns have been allayed by explaining the conditions when a waiver might be granted. Waiver requests submitted to the Division require (at minimum) a qualitative assessment documenting the absence of ecological receptors, or habitat, or complete exposure pathways under current land use or plausible future use. This process is functionally equivalent to a USEPA screening-level ecological risk assessment (Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments USEPA 1997). The proposed changes to Section R315-101-6 will not affect the circumstances when the Division would consider a waiver appropriate because the documentation provided to support the waiver request is the assessment. To Comment 4: The Division is currently evaluating this comment and will make recommendations in the near future. To Comment 5: The Division does not concur with the proposed changes to Subsection R315-101-5.2(b)(2) because site-specific human exposure variables may change over time and the rule already includes provisions for site-specific fate and transport variables. The Division's intent in Subsection R315-101-5.2(b)(2) was to specify default human exposure variables to be consistent with Subsection R315-101-5.2(b)(1) where residential default exposure variables are required. As discussed in the comment, when Rule R315-101 was promulgated in 1994, the Division's intent was to standardize some variables for all facilities. For human exposure variables (e.g., incidental ingestion rate of soil, inhalation rate, body weight, exposure frequency) the Division believes that the default variables provide consistency and validity because these variables are human-specific, not site-specific. The comment provides a citation from Risk Assessment Guidance for Superfund (USEPA, 1989) to support the use of site-specific variables. The reference refers to variables used in environmental fate and transport models (e.g., soil permeability, wind speed). The rule already has a provision to accept site-specific fate and transport data. Subsection R315-101-5.2(b)(2) states: "...The potential land use exposure scenario should include a conceptual model including current site conditions, expected future conditions based upon site-specific physical and chemical information." Unlike the human exposure variables, the environmental fate and transport parameters are unlikely to change substantially over time. To Comment 6: The Division does not concur with the recommendation to include the USEPA Region 8 Superfund Technical Guidance in Subsection R315-101-5.1(a) because the guidance is not consistent with the requirements of Rule R315-101 and the screening is not anticipated to result in a significant reduction in the risk assessment level of effort. The USEPA Region 8 Superfund Technical Guidance Evaluating and Identifying Contaminants of Concern for Human Health recommends USEPA Region III Risk-Based Concentration tables (RBCs). USEPA Region III RBCs do not include an evaluation of the dermal exposure pathway, exposure to vapors from contaminated groundwater or soil, or exposure via homegrown food products. These exposure pathways must be considered (Subsection R315-101-5.2(a)(3) and (b)(1)). Therefore, at sites where the exposure pathways are potentially completed, the RBCs may not be protective of human health.

The full text of this rule may be inspected, during regular business hours, at:

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

Direct questions regarding this rule to:
Susan Toronto at the above address, by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at stortono@deq.state.ut.us

Authorized by: Dennis Downs, Director

Effective: 11/08/2001

Environmental Quality, Water Quality

R317-7

Underground Injection Control (UIC) Program

Five year notice of review and statement of continuation

DAR File No.: 24204
Filed: 11/13/2001, 15:36
NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Money Management Council, Administration
R628-17
Limitations on Commercial Paper and Corporate Notes

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24201
FILED: 11/09/2001, 15:30

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: Underground Injection Control (UIC) rules for state programs are federally-mandated by 40 CFR 145.11(b), as a result of the federal Safe Drinking Water Act (SDWA). If a state does not obtain and maintain primacy to enforce UIC rules at least equivalent to the federal rules, then the Environmental Protection Agency (EPA) will enforce the federal rules in that state using Direct Implementation procedures. The Utah Water Quality Board promulgated the Utah UIC Rules under the authority of Section 19-5-104 of the Water Quality Act which allows rules to be made in order to protect drinking water sources.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was last amended on January 23, 2001. Comments were received from EPA regarding technical programmatic issues. Comments were addressed during the rulemaking process. This has not been a controversial rule. No other comments have been received either supporting or opposing the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required to maintain state primacy for administering Utah’s UIC Program. If Utah does not obtain and maintain primacy to enforce UIC rules at least equivalent to the federal rules, then the EPA will enforce the federal rules using Direct Implementation procedures. In promulgating the rule, the Water Quality Board made the determination that the UIC Program is best administered at the state level.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY WATER QUALITY 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:
Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@deq.state.ut.us

AUTHORIZED BY: Dianne R Nielson, Executive Director

EFFECTIVE: 11/13/2001

Money Management Council, Administration
R628-17
Limitations on Commercial Paper and Corporate Notes

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 24201
FILED: 11/09/2001, 15:30

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 51-7-18 of the Money Management Act allow the Council to make rules regarding the conditions and procedures by which public treasurers may invest public funds. This section also allows the Council to set quality criteria for corporate obligations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides limits that are reasonable in todays markets on the amount of any one issuer of corporate obligations a public entity can invest in. The rule allows the public treasurer the ability to utilize corporates and still maintain safety when investing in these types of securities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
MONEY MANAGEMENT COUNCIL ADMINISTRATION Room 215 STATE CAPITOL 350 N STATE ST SALT LAKE CITY UT 84114-1103, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ann Pedroza at the above address, by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza.stmain@state.ut.us

AUTHORIZED BY: Larry Richardson, Chair

EFFECTIVE: 11/09/2001
Natural Resources, Parks and Recreation  
R651-201  
Definitions  

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 24208  
FILED: 11/13/2001, 15:38  

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 73, Chapter 18 states, "It is the policy of this state to regulate and promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws and to adopt and pursue an educational program in relation thereto." In order to accomplish these goals, terms used most frequently in the rules on boating and vessels need to be defined for users of Utah waters.  

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.  

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: To protect state parks and their natural and cultural resources from misuse or damage, including watersheds, plants, wildlife, and park amenities, the board makes rules for the public to follow. In order to educate the recreational user of state properties and facilities, definition of terms needs to 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:  
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us  

AUTHORIZED BY: Courtland Nelson, Director  
EFFECTIVE: 11/13/2001  

Natural Resources, Parks and Recreation  
R651-202  
Boating Advisory Council  

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 24223  
FILED: 11/13/2001, 16:02  

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: Section 73-18-3.5 states, "The board may appoint an advisory council representing various boating interests to seek recommendations on state boating policies."  

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.  

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is in use and necessary to help with boating safety and water safety in the state of Utah.  

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:  
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us  

AUTHORIZED BY: Courtland Nelson, Director  
EFFECTIVE: 11/13/2001  

Natural Resources, Parks and Recreation  
R651-203  
Waterway Marking System  

137
FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24206
FILED: 11/13/2001, 15:38

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 73-18-4 states that "the board may promulgate rules in creating a uniform waterway marking system which shall be obeyed by all vessel operators." It follows with placement of waterway markers, zoning areas, and fees to be paid by such operators who carry passengers for hire on the waters of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THIS RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary for the safety of the public to operate in appropriate manners and areas. In doing so, this will help protect all who use the waters of Utah for recreational purposes.

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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director
EFFECTIVE: 11/13/2001

Natural Resources, Parks and Recreation
R651-205
Zoned Waters

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 73-18-4(2) states the board may promulgate rules "regarding the placement of waterway markers and other permanent or anchored objects on the waters of this state."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is viable and is currently in force to give direction for all vessel operators using the waterways of Utah. For safety and sensibility, 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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director
EFFECTIVE: 11/13/2001

Natural Resources, Parks and Recreation
R651-204
Regulating Waterway Markers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24211
FILED: 11/13/2001, 15:40

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 73-18-4(1)(c) states that the board may promulgate rules, such as "zoning certain waters of this state for the purpose of prohibiting the operation of vessels or motors for safety and health purposes only..."
SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule states that the operator of a vessel shall obey all zoned water restrictions and requirements throughout the state and those vary with the type of body of water, i.e., Deer Creek Reservoir prohibits vessels and all other water activities within 1,500 feet of the dam, while Palisade prohibits the use of motors totally. The rule is for safety of recreational activities on the waters of the state of Utah, and 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:
Dee Guess at the above address, by phone at 801-538-7320,
by FAX at 801-538-7378, or by Internet E-mail at
nrdpr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director

EFFECTIVE: 11/13/2001

Natural Resources, Parks and Recreation
R651-207
Registration Fee

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24209
Filed: 11/13/2001, 15:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 73-18-7(4) discusses assigned numbers and where they will be placed so they will be visible to law enforcement officers. If the decals cannot be seen, they may be mounted on a backing plate and displayed where appropriate.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: For ease of identification, for safety issues, and for law enforcement matters, this rule is definitely valid and should continue.
Natural Resources, Parks and Recreation
R651-210
Change of Address

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24232
Filed: 11/13/2001, 16:41

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 73-18-7(14) instructs the registered owner to notify the division within 25 days when the address on the register card becomes invalid or inaccurate. At that time, he will give his new address for the file.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Being able to track a registered owner of a motorboat or sailboat and it being said owner's responsibility to notify the division or agent of the division of the change of address, this rule should continue.

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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director
EFFECTIVE: 11/13/2001
Natural Resources, Parks and Recreation

**R651-211**

**Assigned Numbers**

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 24213
Filed: 11/13/2001, 15:40

**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 73-18-7 gives registration requirements, exemptions, agents, public records, period of registration and renewal expiration, notice of transfer of interest or change of address, duplicate registration, invalid registration and the powers of the board to designate the suffix to assigned numbers.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** None.

**REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** Each person acting as a vessel dealer who has an established place of business and is engaged in the business of selling motorboats and/or sailboats shall make application to the Division of Motor Vehicles, who is acting agent for the division, to obtain dealer numbers and registration decals. 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:**

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us

**AUTHORIZED BY:** Courtland Nelson, Director

**EFFECTIVE:** 11/13/2001

---

Natural Resources, Parks and Recreation

R651-216

Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24227
FILED: 11/13/2001, 16:09

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 73-18-8(2) states that each vessel shall display navigation lights when the vessel is on the waters of this state between sunset and sunrise.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: To continue safety requirements for those using the waters of Utah to keep their boats visible at all times with lights that can be seen from a distance of one to three miles depending on class of boat, this rule should be continued for safety issues.

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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director

EFFECTIVE: 11/13/2001

Natural Resources, Parks and Recreation

R651-217

Fire Extinguishers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24225
FILED: 11/13/2001, 16:05

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: UCA 73-18-8(4) requires each vessel to have fire extinguishing equipment on board. The statement of policy, 73-18-1 gives the policy and in it promotes uniformity of laws for the educational programs and promotion of safety for persons and property connected with boating in this state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Public safety is of primary concern to Parks personnel, and while the public recreates in the state on Utah waters, this rule should be continued to help keep the public informed and aware of safety requirements and equipment they need.

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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director

EFFECTIVE: 11/13/2001

Natural Resources, Parks and Recreation

R651-218

Carburetor Backfire Flame Control
FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24216
FILED: 11/13/2001, 15:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: Subsection 73-18-8(5) states that a vessel with any inboard gasoline engine should be equipped with a carburetor backfire flame control device.

Summary of written comments received during and since the last five years review of the rule from interested persons supporting or opposing the rule: None.

Reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any: This device will disperse backfire and flame outside the vessel in a manner that the flame will not endanger the vessel or passengers. For safety reasons, 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:
Dee Guess at the above address, by phone at 801-538-7320, by fax at 801-538-7378, or by Internet E-mail at nrdr.dguess@state.ut.us

Authorized by: Courtland Nelson, Director
Effective: 11/13/2001

Natural Resources, Parks and Recreation

R651-219

Additional Safety Equipment

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24215
FILED: 11/13/2001, 15:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: Section 73-18-8 shows what a board may do regarding safety equipment for vessels and one of the conditions is to require additional safety equipment by rule. This rule summarizes the additional equipment and the exemptions to the rule.

Summary of written comments received during and since the last five years review of the rule from interested persons supporting or opposing the rule: None.

Reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any: All safety equipment is required for vessels to protect and promote well being for the public using the waters of the state of Utah for recreational purposes. This rule includes additional safety concerns by addressing airboat requirements, bailing devices, sound devices, equipment condition, law enforcement vessels, and any kind of exemption such as sailboards, etc. This rule is in effect and in force and should be continued for safety purposes.

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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdr.dguess@state.ut.us

Authorized by: Courtland Nelson, Director
Effective: 11/13/2001
numbering requirements of this chapter if they are not required to be registered in their own state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A motorboat or sailboat belonging to a class of vessels is exempted from registration by the board after the board finds that registration will not materially aid in identification. 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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director

EFFECTIVE: 11/13/2001

Natural Resources, Parks and Recreation
R651-225
Navigation and Steering Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24230
FILED: 11/13/2001, 16:30

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 73-18-15.1 states that the board may promulgate vessel navigation and steering rules for the waters of the state. Any boating rules or regulations contained in the Utah Code Annotated are for the safety and well being of those operating vessels in the state of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue as it is used as a safety awareness of operation of vessels on the waters of Utah.
Natural Resources, Parks and Recreation

**R651-226**

Regattas and Races

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 24218
Filed: 11/13/2001, 15:47

**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 73-18-16 authorizes the division to hold regattas, motorboat, or other boat races, marine parades, tournaments, or exhibitions on any waters of Utah. The board is allowed to adopt rules concerning the safety of vessels and persons either as observers or participants.

Summary of written comments received during and since the last five years review of the rule from interested persons supporting or opposing the rule: None.

Reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any: Any time a race or regatta is held, there are many safety issues involved. In order to keep them organized and safe, this rule should be continued as it creates a list of authorized events and users that helps keep everyone safe and able to utilize the waters of Utah.

---

Natural Resources, Parks and Recreation

**R651-401**

Off-Highway Vehicle and Registration Stickers

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 24219
Filed: 11/13/2001, 15:48

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: In order for the public to use state land for recreating purposes with snowmobiles, motorcycles, or all-terrain type I vehicles as well as all-terrain type II vehicles (Section 41-22-2), their vehicles must be registered and stickers displayed in a designated visible area.

Summary of written comments received during and since the last five years review of the rule from interested persons supporting or opposing the rule: None.

Reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any: Off-highway vehicle safety is in part supported by the enforcement of the registration stickers to show the state where the user is from, the type of vehicle, etc. That way, whoever is enforcing the laws, will know the user has paid taxes and has registered the vehicle.
Direct Questions Regarding This Rule To:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdrpr.dguess@state.ut.us

Authorized by: Courtland Nelson, Director

Effective: 11/13/2001

---

Natural Resources, Parks and Recreation
R651-402
Registration Expiration

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24231
Filed: 11/13/2001, 16:30

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 41-22-5(1) states that the board shall adopt rules which determine the day and month when the annual registration expires.

Summary of Written Comments Received During and Since the Last Five Year Review of the Rule from Interested Persons Supporting or Opposing the Rule: None.

Reasoned Justification for Continuation of the Rule, Including Reasons Why the Agency Disagrees with Comments in Opposition to the Rule, If Any: Registration needs to have a beginning and ending date so the vehicles will go through a process of safety inspection, etc., before a renewal is granted. This is not only a safety issue but a tax base issue as well and the 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.

---

Natural Resources, Parks and Recreation
R651-403
Dealer Registration

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR File No.: 24220
Filed: 11/13/2001, 15:48

Notice of Review and Statement of Continuation

Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: Subsection 41-22-5(2) states that the board shall adopt rules which provide for the issuance and control of dealer registrations for use by dealers and manufacturers for demonstrating and testing purposes.

Summary of Written Comments Received During and Since the Last Five Year Review of the Rule from Interested Persons Supporting or Opposing the Rule: None.

Reasoned Justification for Continuation of the Rule, Including Reasons Why the Agency Disagrees with Comments in Opposition to the Rule, If Any: This rule should be continued because it tracks and maintains a record of each dealer of off-highway vehicles in the state of Utah. It defines for the dealers the requirements and penalties if the requirements are not followed, up to and including suspension of the dealer license to Motor Vehicles.

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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdrpr.dguess@state.ut.us

Authorized by: Courtland Nelson, Director

---
Natural Resources, Parks and Recreation

**R651-404**

**Temporary Registration**

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 24222

FILED: 11/13/2001, 16:01

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

Concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule: Subsection 41-22-5(3) states that the board shall adopt rules which provide for the issuance and control of temporary permits for use by purchasers of off-highway vehicles pending completion of registration.

Summary of written comments received during and since the last five year review of the rule from interested persons supporting or opposing the rule: None.

Reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any: Any vehicle stated in Section 41-22-5.5 that can be used for agricultural purposes must have a husbandry sticker. If that same vehicle is used for recreational purposes as well, on public lands, trails, streets, or highways, it shall also be registered under Section 41-22-3. This rule is established for tracking and maintaining a list of those using public lands for the above stated purpose.

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:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrpr.dguess@state.ut.us

Authorized by: Courtland Nelson, Director

Effective: 11/13/2001

---

**Natural Resources, Parks and Recreation**

**R651-405**

**Off-Highway Implement of Husbandry Sticker Fee**

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 24221


**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 41-22-5.5(1) states that the owner of an all-terrain vehicle, motorcycle, or snowmobile used for agricultural purposes may obtain an off-highway implement (husbandry) sticker.

Summary of written comments received during and since the last five year review of the rule from interested persons supporting or opposing the rule: None.

Reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any: None.

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:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrpr.dguess@state.ut.us

Authorized by: Courtland Nelson, Director

Effective: 11/13/2001

---
Natural Resources, Parks and Recreation

R651-406
Off-Highway Vehicle Registration Fees

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 24229
FILED: 11/13/2001, 16:19

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 41-22-8 states that the board shall establish the registration fees for off-highway vehicles. Fees are $10 at present with a $2 duplication charge.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Fees are enforced and renewed. This rule states information given to the public regarding fees for registering off-highway vehicles and 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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director

EFFECTIVE: 11/13/2001

Natural Resources, Parks and Recreation

R651-801
Swimming Prohibited

Natural Resources, Parks and Recreation

R651-802
Scuba Diving

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 24226
FILED: 11/13/2001, 16:06

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 73-18b-1 states that the board is authorized and empowered to adopt, make, promulgate, amend, and repeal all rules and regulations necessary or convenient to promote safety in swimming, scuba diving, and related activities on any waters where public boating is permitted.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Parks and Recreation works with other agencies and owners or operators of said Utah waters to continue making them safe for the public. Placing signs and designating certain areas as "no swimming" areas is to help protect the public and the resources. This rule should continue.

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:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at nrdpr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director

EFFECTIVE: 11/13/2001
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 73-18b-1 states that
water safety in Utah is everyone’s concern, but Parks and
Recreation oversees the safety issues regarding the waters in
Utah. The board is authorized to make, adopt, promulgate,
amend, and repeal all rules and regulations necessary or
convenient to promote safety for the public and equipment.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE
LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS
SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE,
INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS
IN OPPOSITION TO THE RULE, IF ANY: Any rule set up to help the
public deal with safety of equipment and sport needs to be
continued as it is a guideline for those who scuba dive in Utah.

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:
Dee Guess at the above address, by phone at 801-538-7320,
by FAX at 801-538-7378, or by Internet E-mail at
nrdpr.dguess@state.ut.us

AUTHORIZED BY: Courtland Nelson, Director

EFFECTIVE: 11/13/2001

School and Institutional Trust Lands,
Administration
R850-8
Adjudicative Proceedings

FIVE YEAR 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 53C-1-304 requires the
Board of Trustees for the School and Institutional Trust
Lands Administration to establish due process rules for the
resolution of conflicts regarding actions by the board, director,
and the agency. This rule provides procedures for aggrieved
parties to petition for administrative or judicial review of
actions taken by the board or agency.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE
LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS
SUPPORTING OR OPPOSING THE RULE: No comments have been
received by the Agency concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE,
INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS
IN OPPOSITION TO THE RULE, IF ANY: There continues to be a
need for a mechanism for aggrieved parties to petition for
redress of agency/board actions which affect an interest held
by the parties. This rule provides a reasonable and effective
way to address challenges to agency actions.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
John W Andrews at the above address, by phone at 801-538-
5180, by FAX at 801-355-0922, or by Internet E-mail at
jandrews.tlmain@state.ut.us

AUTHORIZED BY: John W Andrews, Attorney

EFFECTIVE: 11/06/2001
Notices of Rule Effective Dates Begin on the Following Page.
NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the Utah State Bulletin. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

<table>
<thead>
<tr>
<th>Abbreviations</th>
<th>Labor Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMD = Amendment</td>
<td>Adjudication</td>
</tr>
<tr>
<td>CPR = Change in Proposed Rule</td>
<td>No. 24070 (AMD): R602-2-2. Guidelines for</td>
</tr>
<tr>
<td>NEW = New Rule</td>
<td>Utilization of Medical Panel.</td>
</tr>
<tr>
<td>R&amp;R = Repeal and Reenact</td>
<td>Published: October 15, 2001</td>
</tr>
<tr>
<td>REP = Repeal</td>
<td>Effective: November 15, 2001</td>
</tr>
</tbody>
</table>

Commerce

Occupational and Professional Licensing

Real Estate

Environmental Quality

Radiation Control

Natural Resources

Wildlife Resources
- No. 24066 (AMD): R657-6. Taking Upland Game. Published: October 15, 2001 Effective: November 15, 2001
Rules Index Begin on the Following Page.
RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The Rules Index is a cumulative index that reflects all effective changes to Utah’s administrative rules. The current Index lists changes made effective from January 2, 2001, including notices of effective date received through November 15, 2001, the effective dates of which are no later than December 1, 2001. The Rules Index is published in the Utah State Bulletin and in the annual Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: Because of space constraints, neither index is printed in this Bulletin.

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division’s web site (http://www.rules.state.ut.us/).