

UTAH STATE BULLETIN

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

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.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

PUBLICATION ERRORS IN THE APRIL 1, 2003, ISSUE OF THE UTAH STATE BULLETIN

In the April 1, 2003, issue of the *Utah State Bulletin* (2003-7), an effective date for Rule R590-199 (DAR No. 25923) was published as March 14, 2003. The Notice of Effective Date was filed by mistake as this amendment to Rule R590-199 was withdrawn before publication. The Notice of Effective Date should have been for the Change in Proposed Rule (CPR) to Rule R590-199 (DAR No. 25628) that was published in the February 1, 2003, *Bulletin* (2003-3). The effective date for the CPR is March 14, 2003. The corrected notice appears on the NOTICES OF RULE EFFECTIVE DATES page in this issue.

Also, in the April 1, 2003, issue of the *Bulletin*, incorrect dates for the end of public comment and the first possible effective date for the filing on Section R746-348-7 (DAR No. 26112) were published. The public comment date must end 30 days after the date of publication. The correct date is May 1, 2003, and the first possible effective date is May 2, 2003.

If you have any questions regarding these corrections, please contact Nancy Lancaster, Publications Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3218, FAX: (801) 538-1773, or Internet E-mail: nllancaster@utah.gov.

LEGISLATION WHICH AFFECTS RULEMAKING {REVISED}

{**DAR NOTE:** The following notice was published in the April 1, 2003, issue of the *Utah State Bulletin*, however, there was an oversight and the texts of the bills were not included. The texts of the bills follow this notice.}

The 55th Legislature's 2003 General Session ended on March 5, 2003. During the session, two bills passed that affect administrative rules in general.

H.B. 45 "Reauthorization of Administrative Rules" by Rep. David Ure (R)

This is the Administrative Rules Review Committee's annual bill that is required by Section 63-46a-11.5. The long title of H.B. 45 indicates that the bill ". . . reauthorizes all state agency administrative rules."

After it is enrolled, the bill will be sent to the Governor for his signature. The bill provides for an effective date of May 1, 2003, and will go into effect that day pending the Governor's action. A copy of the enrolled bill is published below. **{The Governor signed this bill on March 15, 2003. See UT L 2003 Ch 101.}**

S.B. 30 "Utah Administrative Rulemaking Act Amendments" by Sen. Howard Stephenson (R)

This is a bill recommended by the Administrative Rules Review Committee. The committee's intent is to clarify the rulemaking process, making it clear to agencies that it doesn't matter what a document is called, if it meets the definition of a rule, it is a rule. It is enforceable as a rule only if it is promulgated in accordance with the process required in the rulemaking act.

S.B. 30 changes the rulemaking act in several ways. It deletes the definition of "Policy". It modifies the definition of "Rule" and modifies exclusions. It adds Section 63-46a-3.5 that provides, "An agency's written statement is a rule if it conforms to a definition of a rule under Section 63-46a-2, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter."

After it is enrolled, the bill will be sent to the Governor for his signature. The bill will go into effect on May 5, 2003, pending the Governor's action. A copy of the enrolled bill is published below. **{The Governor signed this bill on March 19, 2003. See UT L 2003 Ch 197.}**

Additional Information

Information about legislation related to rulemaking is available on the Internet at: <http://www.rules.utah.gov/law/legis.htm> . Additional information about the 2003 General Session and specific legislation is available from the Legislature's Office of Legislative Research and General Counsel at: <http://www.le.state.ut.us/~2003/2003.htm> . The Legislature's home page can be found at: <http://le.utah.gov/> .

Questions about this legislation may be directed to Ken Hansen, Director, Division of Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114-1201, phone: 801-538-3777, FAX: 801-538-1773, or Internet E-mail: khansen@utah.gov

H.B. 45 Enrolled

REAUTHORIZATION OF ADMINISTRATIVE RULES

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

This act is required by the Utah Administrative Rulemaking Act. It reauthorizes all state agency administrative rules. This act takes effect on May 1, 2003.

This act enacts uncodified material.

Be it enacted by the Legislature of the state of Utah:

Section 1. **Rules reauthorized.**

All rules of Utah state agencies are reauthorized.

Section 2. **Effective date.**

This act takes effect on May 1, 2003.

S.B. 30 Enrolled

UTAH ADMINISTRATIVE RULEMAKING ACT AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

This act modifies the Utah Administrative Rulemaking Act. This act amends the definition of a rule and clarifies when an agency's written statement is determined to be a rule.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-46a-2, as last amended by Chapter 138, Laws of Utah 2001

ENACTS:

63-46a-3.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63-46a-2** is amended to read:

63-46a-2. Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including:

- (a) the proposed rule, change in the proposed rule, and the rule analysis form;
- (b) the public comment received and recorded by the agency during the public comment period;
- (c) the agency's response to the public comment;
- (d) the agency's analysis of the public comment; and
- (e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9) (a) "File" means to submit a document to the division as prescribed by the division.

(b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

~~[(13) (a) "Policy" means a statement applying to persons or agencies that:]~~

~~[(i) broadly prescribes a future course of action, guidelines, principles, or procedures; or]~~

~~[(ii) prescribes the internal management of an agency.]~~

~~[(b) A policy is a rule if it conforms to the definition of a rule.]~~

~~[(14)](13) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.~~

~~[(15)](14) "Publication date" means the inscribed date of the bulletin.~~

~~[(16)](15) "Register" may include an electronic database.~~

~~[(17)](16) (a) "Rule" means an agency's written statement that:~~

~~(i) is explicitly or implicitly required by state or federal statute or other applicable law;~~

~~[(ii) has the effect of law;]~~

~~[(iii)](ii) implements or interprets a state or federal legal mandate; and~~

~~[(iv)](iii) applies to a class of persons or another agency.~~

(b) "Rule" includes the amendment or repeal of an existing rule.

(c) "Rule" does not mean:

(i) orders;

~~[(ii) unenforceable policies;]~~

~~[(iii) internal management policies of the agency]~~

~~(ii) an agency's written statement that applies only to internal management and that ~~de~~does not restrict the legal rights of a public class of persons or another agency;~~

~~[(iv)](iii) the governor's executive orders or proclamations;~~

~~[(v)](iv) opinions issued by the attorney general's office;~~

~~[(vi)](v) declaratory rulings issued by the agency according to Section 63-46b-21 except as required by Section 63-46a-3~~

; ~~[or]~~

~~[(vii)](vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63-46a-3 (6); or~~

~~(vii) an agency written statement that is in violation of any state or federal law.~~

~~[(18)](17) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.~~

~~[(19)](18) "Substantive change" means a change in a rule that affects the application or results of agency actions.~~

Section 2. Section **63-46a-3.5** is enacted to read:

63-46a-3.5. Rules having the effect of law.

(1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63-46a-2, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.

(2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter is enforceable and has the effect of law.

End of the Editor's Notes Section

SPECIAL NOTICES

GOVERNOR'S PROCLAMATION: CALLING THE FIFTY-FIFTH LEGISLATURE INTO A FIRST EXTRAORDINARY SESSION (SENATE ONLY)

WHEREAS, since the close of the 2003 General Session of the 55th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, MICHAEL O. LEAVITT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 55th Legislature of the State of Utah into a First Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 16th day of April, 2003, at 12:00 noon, for the following purpose:

For the Senate to advise and consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2003 General Session of the 55th Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 1st day of April, 2003.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

HEALTH HEALTH CARE FINANCING

PUBLIC NOTICE OF APPLICATION FOR A SECTION 1115 RESEARCH AND DEMONSTRATION PROJECT

The Division of Health Care Financing, Utah Department of Health, is submitting a proposal for a Section 1115 Research and Demonstration Project to the Centers for Medicare and Medicaid Services. The proposal is to implement a model Children's Hospice International *Program of All-Inclusive Care for Children with life-threatening conditions and their families* (PACC, a registered trademark). Implementation is proposed to begin July 2003 for a five-year period. The proposal may be reviewed in person at the office of the Division of Health Care Financing, Cannon Health Building, 288 N 1460 W, Salt Lake City, UT. Contact Karen Aubrey at (801) 538-6707 for further information.

Program Title/Cost Neutrality

The Utah program is called "Promoting Hospice and Optimal Palliative Efforts for Utah Children" or "Promoting HOPE." The program will offer an array of support services to the family of a child with a life-threatening condition that will supplement the child's Medicaid or other health insurance coverage. The program must remain budget neutral under the conditions of Section 1115 research and demonstration model.

Population Served/Services Offered

Children up to age 18 diagnosed with a life-threatening medical condition so serious it is unlikely the child will survive childhood, as determined by the treating physician, will be eligible for the Promoting HOPE program. All families whose children are referred to the program will receive information and referral and may receive other supportive services to supplement their primary insurance coverage including Case Management, Palliative Care Consultation, Nursing and Other Therapeutic/Palliative Care, Counseling and Expressive Therapies, Ancillary Support/Family Choice Support, Traditional Respite/Family Choice Respite, Medical Supplies and Equipment, Pharmacy, and Transportation support. In the first year, the program will be open only to children with life-threatening conditions who are also eligible for Medicaid. In following years, children who are not eligible for Medicaid but who have private insurance may also enroll after the payment of a sliding fee based upon the family size and income.

For more information or to make public comment about the proposal and the Promoting HOPE for Utah Children, contact the Zohreh Saunders, Project Director, Promoting HOPE for Utah Children, Division of Healthcare Financing at: (801) 538-9227 or by E-mail at: zsaunders@utah.gov.

**NATURAL RESOURCES
WILDLIFE RESOURCES****PUBLIC NOTICE OF EMERGENCY CHANGES TO THE 2003 UTAH FISHING REGULATIONS ESTABLISHED BY THE
UTAH WILDLIFE BOARD FOR TAKING FISH AND CRAYFISH**

I, Kevin Conway, by authority granted in Section 23-14-8 of the Wildlife Resources Code of Utah, declare an emergency amendment to the 2003 Utah Fishing Regulations. The following has been amended:

LITTLE DELL RESERVOIR (Salt Lake County):

Little Dell Reservoir is closed to fishing except when Salt Lake City has the park and reservoir (recreation area) open to general public access. When the park and reservoir are open, angling will only be allowed with flies and lures and the reservoir will remain Catch and Release Only. These tackle and harvest restrictions are the same as approved by the Wildlife Board in the 2003 Fishing Proclamation.

Except for other emergency changes made since January 1, 2003, all other rules established in the 2003 Utah Fishing Regulations remain in effect.

UTAH DIVISION OF WILDLIFE RESOURCES

By: Cynthia Jensen, Acting Director

Subscribed and sworn to before me this 24th day of March 2003.

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 March 15, 2003, 12:00 a.m., and April 1, 2003, 11:59 p.m. are included in this, the April 15, 2003, 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 May 15, 2003. 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 August 13, 2003, 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.

Administrative Services, Facilities
Construction and Management
R23-14
Management of Roofs on State
Buildings

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26115

FILED: 03/24/2003, 14:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Control access to roofs of state buildings to prevent damage to the roof and to improve security.

SUMMARY OF THE RULE OR CHANGE: This rule requires the agency or institution responsible for managing a state building to control the access to the roof of the building and allow access only to authorized persons. It requires documentation of authorizations of access and assigns responsibility for the cost of repairing any damage that may result.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule will allow a more effective use of the state's capital improvement funds by reducing the amount spent to repair roofs damaged by inappropriate access. The rule will require some additional administrative effort by the agencies and institutions responsible for managing buildings but this financial impact is not significant.
- ❖ LOCAL GOVERNMENTS: This rule does not affect local government. Therefore, there is no impact on local government.
- ❖ OTHER PERSONS: This rule will require a minimal amount of additional administrative effort by persons to be authorized to access a roof and those persons will be financially responsible for any damage they may cause to the roof.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will require a minimal amount of additional administrative effort by persons to be authorized to access a roof and those persons will be financially responsible for any damage they may cause to the roof.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have a minimal fiscal impact on businesses that need to access the roof of a state building in order to obtain authorization for access. Those businesses that cause damage to a state roof will be held responsible for the repair of that damage.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT

Room 4110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3267, or by Internet E-mail at knye@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Joseph A. Jenkins, Director

R23. Administrative Services, Facilities Construction and Management.

R23-14. Management of Roofs on State Buildings.

R23-14-1. Purpose and Authority.

(1) This rule provides for the management of roofs on state buildings to prevent damage to the roof and to improve security of state buildings.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

R23-14-2. Definitions.

(1)(a) "Agency" means each department, agency, institution, commission, board, or other administrative unit of the State of Utah.

(b) "Agency" does not mean the State Capitol Preservation Board.

(2) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

(3) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(4) "Employee" means a person employed by the division or a responsible agency.

(5)(a) "Responsible agency" means the agency responsible for managing a state building.

(b) "Responsible agency" does not mean the division.

(6) "State building" means a building owned by an agency.

R23-14-3. Buildings Managed by the Division.

(1) The division shall maintain control of and restrict access to the roof of buildings managed by the division. The division shall allow access only to duly authorized persons as provided in this section.

(2) The division shall maintain a register of all persons granted ongoing or limited access to the roofs it manages. This shall include a list of division employees that are granted ongoing access.

(3) The register required under Subsection (2) as well as a file of the completed roof access application/agreement forms shall be retained for a period of not less than three years.

(4) In order to obtain access, a person, who is not an employee of the division, must complete and execute a roof access application/agreement form which must be approved by the director.

(5) The roof access application/agreement form shall include:

(a) the name of the person granted access, the period of time for which access is granted, the reason for the access, and any restrictions on the access;

(b) an agreement from the person granted access to accept responsibility for and pay for the repair of any damage resulting from that person's access;

(c) an agreement to hold the agency and the State of Utah harmless from any liability or claim resulting from the person's access;

(d) a statement by the person requesting access that he has obtained adequate fall protection training as appropriate for the roof to be accessed and the activity to be performed thereon;

(e) the signature of the person requesting access; and

(f) the signature of the person granting access.

(6) The division shall provide, or require the person accessing the roof to provide, any fall protection equipment required by OSHA regulations or otherwise provide for the safety of the person accessing the roof.

(7) The access limitations of this rule may be modified or reduced in order to provide access to roofs or portions of roofs that are designed and constructed for such access.

R23-14-4. Buildings Managed by Responsible Agencies.

(1) Responsible agencies shall adopt and implement policies and procedures at least as stringent as those contained in Section R23-14-3 to provide for the control of and restricted access to roofs of buildings managed by the responsible agency.

(2) The responsible agency shall develop its own means of documenting those granted access and shall identify person(s) authorized to grant access to roofs.

(3) In applying the requirements of subsection R23-14-4(1), references to employees of the division in Section R23-14-3 shall mean employees of the responsible agency.

(4) Employees of the division shall have access to these roofs after checking in with the responsible agency. The responsible agency will not need to document access by employees of the division.

R23-14-5. Access to Capital Improvement Funds for Roofing Repairs.

(1) The division may refuse to use capital improvement funds appropriated to the division for the repair of roof damage if the responsible agency fails to implement or comply with the policies and procedures required by Section R23-14-4.

(2) The division may require a review of roof access records prior to accepting financial responsibility for the cost of repairing damage to a roof.

KEY: public buildings, security, roofs

2003

63A-5-103



Administrative Services, Purchasing
and General Services

R33-2-102

Authority to Make Small Purchases

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26136

FILED: 04/01/2003, 17:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Allows the chief procurement officer to delegate authority to agency heads to make small purchases up to \$50,000.

SUMMARY OF THE RULE OR CHANGE: This rule amendment adopted by the Procurement Policy Board increases the amount that the chief procurement officer may delegate to agency heads for small purchases from \$20,000 to \$50,000.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-56-7, 63-56-10, and 63-56-22

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--It is not anticipated that this amendment will result in an overall positive or negative fiscal impact to the state budget. When the chief procurement officer delegates authority it is generally based upon a request by the agency. Some of the cost of conducting the procurement then is shifted from the Division of Purchasing to the using agency, but the overall impact to the state budget is neutral.

❖ LOCAL GOVERNMENTS: None--This rule does not apply to local governments. Therefore, there are no costs or savings impact to local government.

❖ OTHER PERSONS: None--This amendment does not impose any additional requirements or procedures on suppliers or others, therefore there should be no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no compliance costs to affected persons because this rule change does not add any additional requirements or procedures for prospective suppliers, or others.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that this rule change will have a fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
Room 3150 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:

Douglas Richins at the above address, by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at drichins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Douglas Richins, Director

**R33. Administrative Services, Purchasing and General Services.
R33-2. Procurement Organization.**

R33-2-102. Authority to Make Small Purchases.

(1) General. The Chief Procurement Officer may delegate to the head of any using agency the authority to make a purchase expected to be less than ~~[\$20,000]~~\$50,000 for supplies and services. This delegation shall be in writing and may be limited as the Chief Procurement Officer directs.

(2) Purchasing Agencies Shall Make Small Purchases Pursuant to Rules. Purchasing agencies shall exercise authority as may be delegated, and such small purchases shall be made pursuant to subpart 3-3 of part 3 of these rules.

KEY: government purchasing

~~[4993]~~2003

Notice of Continuation November 27, 2002
63-56

▼ ————— ▼

**Administrative Services, Purchasing
and General Services**

R33-3

**Source Selection and Contract
Formation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26138

FILED: 04/01/2003, 17:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Increases the dollar amount that is delegated to agencies to make small purchases; raises the formal bid/RFP threshold; recognizes the internet as an appropriate bid publication medium; and provides that tie bids may be resolved by awarding to a local supplier in compliance with HCR9 (2003 General Session). (DAR NOTE: HCR9 was effective March 15, 2003.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment, adopted by the Procurement Policy Board, increases the formal bid threshold from \$20,000 to \$50,000; provides that internet publication is an acceptable means of providing public bid notice; provides that tie bids may be resolved by awarding the contract to a local supplier; increases the dollar amount requiring notice to the Attorney General of tie bids; increases the threshold from \$500 to \$1,000 that agencies must obtain and document price competition; and increases from \$2,000 to \$5,000 the level that agencies may make purchases without the involvement of the Division of Purchasing.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-56-7, 63-56-10, 63-56-20, 63-56-21, 63-56-22, and 63-56-33

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There could be a \$6,000 reduction. The rule change recognizing the Internet as an appropriate venue for providing public notice of bids may result in reduced expenditures for newspaper legal publications. Otherwise, it is not anticipated that this amendment will result in an overall positive or negative fiscal impact to the state budget, though there may be some internal cost or savings depending on the agency. This rule change allows for more small purchases to be delegated to the agencies, thus the cost of conducting the procurement for these smaller purchases is moved to the using agency, but the overall impact to the state budget is neutral.

❖ LOCAL GOVERNMENTS: None--This rule does not apply to local governments. Therefore, there are no costs or savings impact on local government.

❖ OTHER PERSONS: None--This amendment does not impose any additional requirements or procedures on suppliers or others, therefore, there should be no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no compliance costs to affected persons because this rule change does not add any additional requirements or procedures for prospective suppliers, or others.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that this rule change will have a fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
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THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Douglas Richins, Director

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**R33. Administrative Services, Purchasing and General Services.
R33-3. Source Selection and Contract Formation.
R33-3-1. Competitive Sealed Bidding; Multi-Step Sealed Bidding.
3-101 Content of the Invitation For Bids.**

(1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.

(2) Content. The Invitation for Bids include the following:

(a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;

(b) The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description;

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where the documents can be obtained.

(4) Acknowledgement of Amendments. The Invitation for Bids shall require the acknowledgement of the receipt of all amendments issued.

3-102 Bidding Time. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.

3-103 Bidder Submissions.

(1) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

(2) Telegraphic Bids. The Invitation for Bids may state that telegraphic bids and mailgrams will be considered whenever they are received in hand at the designated office by the time specified for bid opening. Telegraphic bids or mailgrams shall contain specific reference to the Invitation for Bids, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the Invitation for Bids. Bidders submitting telegraphic or mailgram bids shall submit a formal bid on the Invitation for Bids form within three days of the bid opening date or a time designated by the procurement officer.

(3) Bid Samples and Descriptive Literature.

(a) Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the purchasing agency in considering whether the item meets requirements or criteria set forth in the invitation.

(b) Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

(c) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

(d) Samples of items, when called for in the Invitation for Bids, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with merchandise furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the purchasing agency.

(4) Bid Security. Bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interests of the purchasing agency. Any requirements must be set forth in the

solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility.

(5) Bid Price. Bid prices submitted in response to an invitation for bids must stand alone and may not be dependent upon a bid submitted by any other bidder. A bid reliant upon the submission of another bidder will not be considered for award.

3-104 Public Notice.

(1) Distribution. Invitation for Bids or notices of the availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing reasonable competition. Notices of availability shall indicate where, when, and for how long Invitation for Bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. Where appropriate, the procurement officer may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

(2) Publication. Every procurement in excess of ~~[\$20,000]~~\$50,000 shall be publicized in any or all of the following:

(a) in a newspaper of general circulation;

(b) in a newspaper of local circulation in the area pertinent to the procurement;

(c) in industry media; or

(d) in a government internet website or publication designed for giving public notice.

(3) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.

3-105 Bidder List; Prequalification.

(1) Purpose. Lists of qualified prospective bidders may be compiled and maintained by purchasing agencies for the purpose of soliciting competition on various types of supplies, services, and construction. Qualifications for inclusion on the lists may include legal competence to contract and capabilities for production and distribution as considerations. However, solicitations shall not be restricted to prequalified suppliers, and unless otherwise provided inclusion or exclusion on the name of a business does not determine whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(2) Public Availability. Subject to procedures established by the procurement officer, names and addresses on bidder lists shall be available for public inspection.

3-106 Pre-Bid Conferences.

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in section 3-107 and the Invitation for Bids and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the procurement officer, a copy shall be supplied to all those prospective bidders known to have received an Invitation for Bids and shall be available as a public record.

3-107 Amendments to Invitation for Bids.

(1) Application. Amendments should be used to:

(a) make any changes in the Invitation for Bids including changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(b) correct defects or ambiguities; or

(c) furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of information would be inequitable to other bidders.

(2) Form. Amendments to Invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued.

(3) Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit proper preparation, to the extent possible the time shall be increased in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

3-108 Pre-Opening Modification of Withdrawal of Bids.

(1) Procedure. Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. A telegraphic modification or withdrawal received by telephone prior to bid opening from the receiving telegraph company will be effective if the telegraph company confirms the message by sending a copy of the written telegram showing that the message was received prior to bid opening.

(2) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

3-109 Late Bids, Late Withdrawals, and Late Modifications.

(1) Definition. Any bid, withdrawal, or modification received at the address designated in the Invitation for Bids after the time and date set for opening of bids at the place designated for opening is late.

(2) Treatment. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of personnel directly serving the procurement activity or lateness otherwise not attributable to bidder's fault or negligence.

(3) Records. Records equivalent to those required in section 3-108 (3) shall be made and kept for each late bid, late modification, or late withdrawal.

3-110 Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. They shall be stored in a secure place until bid opening time.

(2) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection (3) of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

(3) Confidential Data. The procurement officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer shall

inform the bidders in writing what portions of the bids will be disclosed.

3-111 Mistakes in Bids.

(1) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the procurement officer and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in section 3-108.

(3) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection (1), (4) and (6) of this section are met.

(4) Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in paragraphs (a), (b) and (c) below in which mistakes in bids are discovered after opening but before award.

(a) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The procurement officer may waive these informalities. Examples include the failure of a bidder to:

(i) return the number of signed bids required by the Invitation for Bids;

(ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(C) Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(D) Mistakes Where Intended Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:

(i) a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or

(ii) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(5) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

(6) Written Approval or Denial Required. The procurement officer shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Approval or denial may be so indicated on the bidder's written request for correction or withdrawal.

3-112 Bid Evaluation and Award.

(1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to

determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, when it is the best interests of the purchasing agency as determined by the purchasing agency. In the event of cancellation of the solicitation or rejection of all bids or proposals received in response to a solicitation, the reasons for cancellation or rejection shall be made a part of the bid file and shall be available for public inspection and the purchasing agency shall (a) resolicit new bids using the same or revised specifications; or (b) withdraw the requisition for supplies or services.

(2) Responsibility and Responsiveness. Responsibility of prospective contractors is covered by subpart 3-7 of these rules. Responsiveness of bids is covered by Subsection 63-56-5(21) and responsive bidder is defined in Subsection 63-56-5(23).

(3) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

- (a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;
- (b) examination of such elements as appearance, finish, taste, or feel; or
- (c) other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

(4) Determination of Lowest Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of criteria include transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall:

- (a) be reasonable estimates based upon information the purchasing agency has available concerning future use; and
- (b) treat all bids equitably.

(5) Extension of Time for Bid or Proposal Acceptance. After opening bids or proposals, the procurement officer may request bidders or offerors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting an extension shall be documented.

(6) Only One Bid or Proposal Received. If only one responsive bid is received in response to an Invitation for Bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and:

- (a) new bids or offers may be solicited;
- (b) the proposed procurement may be canceled; or
- (c) if the procurement officer determines in writing that the need for the supply of service continues but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under subpart 3-4 or subpart 3-5, as appropriate.

(7) Multiple or Alternate Bids or Proposals. Unless multiple or alternate bids or offers are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids or offers shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid or offer submitted by the bidder or offeror. The provisions of this subsection shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.

3-113 Tie Bids.

(1) Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.

(2) Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the procurement officer, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:

- (a) where identical low bids include the cost of delivery, award the contract to the bidder ~~[farthest from]~~ closest to the point of delivery;
- (b) award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;
- (c) award to the identical bidder with the earliest delivery date;
- (d) award to a Utah resident bidder or for a Utah produced product where other tie bids are from out of state;
- (e) if price is considered excessive or for other reason the bids are unsatisfactory, reject all bids and negotiate a more favorable contract in the open market; or
- (f) if no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.

(3) Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:

- (a) the Invitation for Bids;
- (b) the supply, service, or construction item;
- (c) all the bidders and the prices submitted; and
- (d) procedure for resolving tie bids. A copy of each record shall be sent to the Attorney General if the tie bids are in excess of ~~[\$8,000]~~ \$50,000.

3-114 Multi-Step Sealed Bidding.

(1) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the purchasing agency and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method will be used when the procurement officer deems it to the advantage of the purchasing agency. Multi-step sealed bidding will thus be used when it is considered desirable:

- (a) to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
- (b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information,

permit amendments of technical offers, or amend the purchase description;

(c) to accomplish subsections (a) and (b) of this section prior to soliciting priced bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures. 3-115 Pre-Bid Conferences in Multi-Step Sealed Bidding.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers.

3-116 Procedure for Phase One of Multi-Step Sealed Bidding.

(1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the multi-step Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) whether price bids are to be submitted at the same time as unpriced technical offers; if they are, the price bids shall be submitted in a separate sealed envelope;

(c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(d) the criteria to be used in the evaluation of the unpriced technical offers;

(e) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction item offered. Prior to the award of the selection of the lowest responsive and responsible bidder following phase two, technical offerors shall be shown only to purchasing agency personnel having a legitimate interest in them. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

(4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in

accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (5) of this section.

(5) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(6) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer to be unacceptable, the officer shall notify the bidder. The bidders shall not be afforded an additional opportunity to supplement technical offers.

3-117 Mistakes During Multi-Step Sealed Bidding.

Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-116(5) (procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Unpriced Technical Offers); or

(c) when responding to any amendment of the Invitation for Bids.

Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

3-118 Carrying Out Phase Two.

(1) Initiation. Upon the completion of phase one, the procurement officer shall either:

(a) open price bids submitted in phase one from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended; or

(b) invite each acceptable bidder to submit a price bid.

(2) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:

(a) as specifically set forth in section 3-114 through section 3-120 of these rules; and

(b) no public notice need be given of this invitation to submit.

3-119 Procuring Governmental Produced Supplies or Services.

Purchasing agency requirements may be fulfilled by procuring supplies produced or services performed incident to programs such as industries of correctional or other governmental institutions. The procurement officer shall determine whether the supplies or services meet the purchasing agency's requirements and whether the price

represents a fair market value for the supplies or services. If it is determined that the requirements cannot thus be met or the price is not fair and reasonable, the procurement may be made from the private sector in accordance with the Utah Procurement Code. When procurements are made from other governmental agencies, the private sector need not be solicited to compete against them.

3-120 Purchase of Items Separately from Construction Contract.

The procurement officer is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

3-121 Exceptions to Competitive Sealed Bid Process.

(1) The Chief Procurement Officer, head of a purchasing agency or designee may utilize alternative procurement methods to purchase items such as the following when determined to be more practicable or advantageous to the state.

- (a) Used vehicles
- (b) Livestock

(2) Alternative procurement methods including informal price quotations and direct negotiations may be used by the Chief Procurement Officer, head of the purchasing agency or designee for the following:

- (a) Hotel conference facilities and services
- (b) Speaker honorariums

(3) Documentation of the alternative procurement method utilized shall be part of the contract file.

3-130 Reverse Auctions.

(1) Definition. In accordance with Utah Code Annotated Section 63-56-20.1 a "reverse auction" means a process where:

(a) contracts are awarded in a open and interactive environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) Reverse auction is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated against the established criteria by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase submit their price bids through a reverse auction.

(3) Use. The reverse auction method will be used when the procurement officer deems it to the advantage of the purchasing agency.

3-131 Pre-Bid Conferences in Reverse Auctions.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers, or to explain the reverse auction process.

3-132 Procedure for Phase One of Reverse Auctions.

(1) Form. A reverse auction shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the reverse auction Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) that it is a reverse auction procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(c) the criteria to be used in the evaluation of the unpriced technical offers;

(d) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(e) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(f) the manner which the second phase reverse auction will be conducted.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction offered. Prior to the selection of the lowest bid of a responsive and responsible bidder following phase two, technical offers shall remain confidential and shall be available only to purchasing agency personnel and those involved in the selection process having a legitimate interest in them.

(4) Non-Disclosure of Proprietary Data. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing. If a bidder has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the procurement officer shall examine the request in the proposal to determine its validity prior to the beginning of phase two. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portion of the bid will be disclosed and that, unless the bidder withdraws the bid it will be disclosed.

(5) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (6) of this section.

(6) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical

offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(7) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer is unacceptable, the officer shall notify the bidder. After this notification the bidder shall not be afforded an additional opportunity to modify their technical offer.

3-133 Carrying Out Phase Two of Reverse Auctions.

(1) Upon the completion of phase one, the procurement officer shall invite those technically qualified bidders to participate in phase two of the reverse auction which is an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed.

(2) The invitation for bids shall:

(a) establish a date and time for the beginning of phase two;

(b) establish a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependent on a variable specified in the invitation for bids.

(3) Following receipt of the first bid after the beginning of phase two, the lowest bid price shall be posted, either manually or electronically, and updated as other bidders submit their bids.

(a) At any time before the closing date and time a bidder may submit a lower bid, provided that the price is below the then lowest bid.

(b) Bid prices may not be increased after the beginning of phase two.

3-134 Mistakes During Reverse Auctions.

(1) Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-132(5) (procedure for Phase One of Reverse Auctions, Discussion of Unpriced Technical Offers); or

(c) when responding to any amendment of the Invitation for Bids.

Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

(2) A phase two bid may be withdrawn only in accordance with 3-111. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, the procurement officer may cancel the solicitation or reopen phase two bidding to all bidders deemed technically qualified through phase one by giving notice to those bidders of the new date and time for the beginning of phase two and the new closing date and time.

R33-3-3. Small Purchases.

3-301 Authority to Make Small Purchases.

(1) Amount. The Office of the Chief Procurement Officer or purchasing agency may use these procedures if the procurement is estimated to be less than ~~[\$20,000]~~[\$50,000] for supplies, services or construction. If these procedures are not used, the other methods of source selection provided in Section 63-56-23 of the Utah Procurement Code and these rules shall apply.

(2) Existing Statewide Contracts. Supplies, services, or construction items available under statewide contracts or similar agreements shall be procured under these agreements in accordance

with the provisions or requirements for use and not under this subpart unless otherwise authorized by the Chief Procurement Officer.

(3) Available from One Business Only. If the supply, service, or construction item is available only from one business, the sole source procurement method set forth in subpart 3-4 of these rules shall be used.

(4) Division of Requirements. Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 63-56-23 of the Utah Procurement Code.

3-302 Small Purchases of Supplies, Services or Construction Between ~~[\$2,000 and \$20,000]~~[\$5,000 and \$50,000].

(1) Procedure. Insofar as it is practical for small purchases of supplies, services or construction between ~~[\$2,000 and \$20,000]~~[\$5,000 and \$50,000], no less than two businesses shall be solicited to submit telephone or written quotations. Award shall be made to the business offering the lowest acceptable quotation.

(2) Records. The names of the businesses offering quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

3-303 Small Purchases of ~~[\$2,000]~~[\$5,000] or Less.

The Chief Procurement Officer shall delegate to state agencies the ability to make purchases up to ~~[\$2,000]~~[\$5,000] without involvement of the Division of Purchasing. For purchases up to ~~[\$500]~~[\$1,000], the agency may select the best source without seeking competitive quotes. For purchases over ~~[\$500 and up to \$2,000]~~[\$1,000 and up to \$5,000], agencies shall obtain price competition, and shall purchase the item from the vendor offering the lowest quote. Unless otherwise delegated requests for all purchases over ~~[\$2,000]~~[\$5,000], and sole source purchases exceeding ~~[\$500]~~[\$1,000] shall be submitted to the Division of Purchasing.

3-304 Small Purchases of Services of Professionals, Providers, and Consultants.

If it is expected that the services of professionals, providers, and consultants can be procured for less than ~~[\$20,000]~~[\$50,000], the procedures specified in this subpart may be used.

KEY: government purchasing

~~[December 3, 2001]~~2003

Notice of Continuation November 27, 2002
63-56



Administrative Services, Purchasing and General Services

R33-5

Construction and Architect - Engineer Selection

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26139

FILED: 04/01/2003, 18:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Raises the formal bid/request for proposal (RFP) threshold for construction and architect - engineer services; raises the

required bid and performance security levels; and raises the waiver of bonding requirements on small projects to the formal bid threshold.

SUMMARY OF THE RULE OR CHANGE: Raises the formal bid/RFP threshold for construction and architect - engineer services from \$20,000 to \$50,000; raises the required bid and performance security levels from \$20,000 to \$50,000; and raises the waiver of bonding requirements on small projects to the formal bid threshold.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-56-7, 63-56-20, 63-56-21, 63-56-22, 63-56-37, and 63-56-38

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--It is not anticipated that this amendment will result in an overall positive or negative fiscal impact to the state budget. This raises the formal bid threshold for construction and Architect - Engineer services projects. It will allow procurements under the formal bid threshold to be conducted more quickly, and be more responsive to agency deadlines. These competitive procurement processes will continue to be conducted by the Division of Purchasing therefore, it is anticipated that there will be no fiscal impact.

❖ LOCAL GOVERNMENTS: None--This rule does not apply to local governments. Therefore, there are no costs or savings impact to local government.

❖ OTHER PERSONS: None--This amendment does not impose any additional requirements or procedures on suppliers or others, therefore there should be no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no compliance costs to affected persons because this rule change does not add any additional requirements or procedures for prospective suppliers, or others.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that this rule change will have a fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
Room 3150 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:

Douglas Richins at the above address, by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at drichins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Douglas Richins, Director

**R33. Administrative Services, Purchasing and General Services.
R33-5. Construction and Architect-Engineer Selection.**

R33-5-102. Application.

The provisions of this chapter shall apply to all procurements of construction which are estimated to be greater than ~~[\$20,000]~~\$50,000. Procurement of construction expected to be less than ~~[\$20,000]~~\$50,000 shall be made in accordance with R33-3-3 (Small Purchases) except bid, performance and payment bonds shall be required unless waived in accordance with R33-5-355 (Waiver of Bonding Requirements on Small Projects).

R33-5-311. Bid Security: General.

Invitations for Bids on State construction contracts estimated to exceed ~~[\$20,000]~~\$50,000 shall require the submission of bid security in an amount equal to at least 5% of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness) except as provided by Section R33-5-313 (Nonsubstantial Failure to Comply).

R33-5-321. Performance Bonds: General.

A performance bond on the exact form provided in R33-5-342 is required for all construction contracts in excess of ~~[\$20,000]~~\$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-331. Payment Bonds: General.

A payment bond on the exact form provided in R33-5-343 is required for all construction contracts in excess of ~~[\$20,000]~~\$50,000, in the amount of 100% of the contract price. The payment bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-355. Waiver of Bonding Requirements on Small Projects.

The Chief Procurement Officer, or designated procurement official, may elect not to require a Performance or Payment Bond as required under Section 63-56-38 Utah Code Annotated, 1953 as amended, if the estimated total procurement does not exceed ~~[\$20,000]~~\$50,000. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

R33-5-530. Small Purchases of Architect-Engineer Services.

When the procurement of Architect-Engineer Services is estimated to be less than ~~[\$20,000]~~\$50,000, the procurement officer may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to exceed ~~[\$20,000]~~\$50,000 then the selection method prescribed by the following sections apply.

KEY: government purchasing

~~[June 15, 2000]~~2003

Notice of Continuation November 27, 2002

63-56-1 et seq.



Commerce, Occupational and
Professional Licensing
R156-47b-202
Massage Therapy Education Peer
Committee

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26126

FILED: 03/27/2003, 15:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment establishes an educational peer committee to assist the Division and the Utah Board of Massage Therapy to establish standards and to review massage school curriculums as required in Subsection 58-47b-302(2)(e)(i)(A).

SUMMARY OF THE RULE OR CHANGE: Section R156-47b-202 is added to create a Massage Therapy Education Peer Committee. The new section defines the purpose of the committee and the composition of the committee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-47b-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division will incur minimal costs, less than \$75, to reprint this rule once this proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget. Even though the proposed amendment creates an advisory peer committee, there will be no additional costs to the Division involved with the committee since committee members perform their duty as a public service.

❖ **LOCAL GOVERNMENTS:** The proposed amendment does not apply to local governments. Therefore, there is no anticipated cost or savings.

❖ **OTHER PERSONS:** Even though the proposed amendment creates an advisory peer committee, there will be no additional costs to any massage therapy licensee or any other person involved with the committee since committee members

perform their duty as a public service. This proposed amendment will aid the Division to more efficiently address the requirement to set standards for and approving the curriculums of massage schools within Utah. The establishment is an aid to the Board and Division and does not increase any costs to the massage schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Even though the proposed amendment creates an advisory peer committee, there will be no additional costs to any massage therapy licensee or any other person involved with the committee since committee members perform their duty as a public service. This proposed amendment will aid the Division to more efficiently address the requirement to set standards for and approving the curriculums of massage schools within Utah. The establishment is an aid to the Board and Division and does not increase any costs to the massage schools.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of this rule change. 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:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

R156-47b. Massage Therapy Practice Act Rules.

R156-47b-202. Massage Therapy Education Peer Committee.

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee.

(a) The Education Peer Committee shall:

(i) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;

(ii) recommend to the Board standards for massage school curriculums, apprenticeship curriculums, and animal massage training; and

(iii) periodically review the current curriculum requirements.

(b) The composition of this committee shall be:

(i) two individuals who are instructors in massage therapy;

(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and

(iii) one individual from the Utah State Office of Education.

KEY: licensing, massage therapy

~~January 16, 2003~~

Notice of Continuation February 26, 2001

58-1-106(1)(a)

58-1-202(1)(a)

58-47b-101

Commerce, Occupational and Professional Licensing

R156-59

Professional Employer Organization Act Rules

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26116

FILED: 03/24/2003, 16:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is repealing this rule as the rule has become outdated with the recent passage of S.B. 155 which deleted licensure of professional employer organizations and will now require only registration requirements for professional employer organizations. No replacement rule will be required. (DAR NOTE: S.B. 155 is found at UT L 2003 Ch 260, and will be effective May 5, 2003.)

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

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-59-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division anticipates minimal savings, less than \$100, to its budget by not needing to copy and distribute this rule that is being repealed.

❖ LOCAL GOVERNMENTS: The rule does not apply to local governments. Therefore, there are no anticipated savings or costs to local governments.

❖ OTHER PERSONS: The Division anticipates there will be no cost or savings impact to the professional employer organization companies beyond those created by the statute amendments in S.B. 155.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates there will be no cost or savings impact to the professional employer organization companies beyond those created by the statute amendments in S.B. 155.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is in accordance with statutory changes made in the 2003 legislative session. The rule's licensure requirements are no longer necessary due to the passage of S.B. 155, which substituted licensure requirements for professional employer organizations with registration requirements. This rule change does not create any fiscal impact to businesses beyond those created in S.B. 155. 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@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

~~[R156-59. Professional Employer Organization Act Rules.~~

~~R156-59-101. Short Title.~~

~~—These rules are known as the "Professional Employer Organization Act Rules".~~

~~R156-59-102. Reserved.~~

~~R156-59-103. Authority Purpose.~~

~~—These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 59.~~

~~R156-59-104. Organization Relationship to Rule R156-1.~~

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

~~R156-59-302a. Qualifications for Licensure.~~

~~—(1) In accordance with Subsection 58-59-302(4), the Division shall require the PEO's audited financial statement for the year immediately preceding the date of the license application.~~

~~—(2) In accordance with Subsection 58-59-302(6), responsible managers shall document the following education and experience requirements:~~

~~—(a) an earned bachelors or post graduate degree in law, accounting, finance or business administration or other related educational program approved by the Division in consultation with~~

the Board and has a minimum of two years of full time paid experience in law, accounting, finance, business administration, management, or other related education and experience approved by the Division in consultation with the Board; or

— (b) graduation from high school or have a GED equivalent and have six years of full time paid experience in accounting, finance, business administration, management, or other related experience approved by the Division in consultation with the Board.

— (3) In accordance with Subsections 58-59-501(5) and 58-59-502(1), each applicant for licensure as a PEO shall submit a form of the contract to be used between the PEO and the employee and submit a form of the contract to be used between the PEO and the client company to whom leased employees are provided.

— (a) The contract forms shall contain:

— (i) the name and address of the PEO as filed with the Division of Corporations and Commercial Code and the name and address under which the company does business;

— (ii) disclosure that the employee is under contract for the purpose of being leased to a client company;

— (iii) disclosure of the identity of the entity from whom the employee will receive compensation for work performed;

— (iv) disclosure of the total compensation, including all employee benefits, to which the employee will be entitled;

— (v) representation by the PEO that it will pay or cause to be paid when due all amounts to which the employee is entitled or which are to be paid to others, including government agencies and insurance companies; and

— (vi) disclosure of any other matter which is material in the employment of the employee by the PEO or in the leasing of the employee to a client company.

— (b) The contract forms specified in Subsection (a) shall be accompanied by a letter from legal counsel for the PEO expressing a legal opinion that the contract forms comply with the contract standards set forth in Title 58, Chapter 59, and this section.

~~R156-59-302b. Change in Ownership or Change in Officers, Directors, Responsible Managers or Other Persons Who Have Controlling Interest.~~

— (1) In accordance with Subsections 58-59-302(5) and (6) and 58-59-502(2), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of a criminal background check satisfactory to the Division within 10 days after the change.

— (2) In accordance with Subsection 58-59-302(5), responsible managers shall require submission of evidence in a form prescribed by the Division that the new responsible manager has the education and experience requirements set forth in Subsection R156-59-302a(4) within 10 days after the change.

~~R156-59-306. Financial Filing Requirements.~~

— In accordance with Subsection 58-59-306(1), the quarterly reports prepared by an independent CPA shall be submitted in accordance with the following schedule:

— (a) March 31 for the quarter ending December 31;

— (b) June 30 for the quarter ending March 31;

— (c) September 30 for the quarter ending June 30; and

— (d) December 31 for the quarter ending September 30.

~~R156-59-502. Process for Obtaining Prior Written Approval for Sales, Transfers or Entering Into Contracts which Commits the Licensee to Make Future Payments.~~

— In accordance with Subsection 58-59-502(4), in order to obtain prior written approval from the Division for sales, transfers or entering into contracts which commits the licensee to make future payments, the PEO shall submit:

— (1) an application for licensure, if the event or events listed in Subsection 58-59-502(4) results in or would require the creation of a new business entity; or

— (2) a verification prepared by an independent certified public accountant stating that upon completion of the event or events listed in Subsection 58-59-502(4) the PEO will have a minimum adjusted net worth of \$50,000 or 5% of the total adjusted liabilities, whichever is greater.

~~KEY: licensing, professional employer organization*~~

~~August 1, 2002~~

~~Notice of Continuation January 9, 2003~~

~~58-1-106(1)~~

~~58-1-202(1)~~

~~58-59-101]~~

▼ ————— ▼

**Commerce, Real Estate
R162-9
Continuing Education**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26118

FILED: 03/26/2003, 10:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Real Estate Commission has decided to liberalize the rule on continuing education for real estate agents and brokers to permit more distance education and less "live" education.

SUMMARY OF THE RULE OR CHANGE: The continuing education requirement will no longer be 12 "classroom" hours. Up to six hours of the required continuing education may be videotaped courses, computer courses, or other education in which the instructor and student are separated by distance and/or by time with no "live" instructor present.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: In is not anticipated that the Division of Real Estate will either incur costs or realize savings because of administering the changed continuing education requirements.

❖ LOCAL GOVERNMENTS: This rule does not affect local government. Therefore, there are no costs or savings impact to local governments.

❖ OTHER PERSONS: It is anticipated that this rule will result in a savings to those who are required to take real estate continuing education and to the providers of that education because fewer continuing education courses will have to be "live" courses in a traditional classroom setting.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The real estate licensees and education providers regulated by the Division of Real Estate are likely to realize savings because of this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule changes should result in savings to providers and consumers of continuing education because of increased availability of distance education.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R162. Commerce, Real Estate.

R162-9. Continuing Education.

R162-9-1. Objective and Specific Hour Requirements.

9.1.1 Objective. Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Real Estate Commission's primary objective of protection of and service to the public.

9.1.[+]2. Specific Hour Requirements. ~~[A licensee renewing a sales agent or broker license shall be required to provide evidence of having taken 12 classroom hours or its equivalent of certified real estate education within the two year period preceding the licensee's renewal date.~~

~~9.1.1.1]~~ A minimum of three of the 12 hours of continuing education required by Section 61-2-9(2)(a) must be taken in a "core" course, the subject of which will be designated by the Division to keep a licensee current in changing practices and laws.

9.1.2.1 Definitions.

9.1.2.1.1 For the purposes of this rule, "live" continuing education is defined as: a) live, in-class instruction; or b) videotapes, computer courses, or other education in which the instructor and the

student are separated by distance and sometimes by time, so long as the education takes place in a school or industry association office with a Division-certified preclicensing instructor present to answer questions.

9.1.2.1.2 For the purposes of this rule, "passive" continuing education is defined as videotapes, computer courses, or other education in which the instructor and student are separated by distance and sometimes by time if viewed in a location where no Division-certified preclicensing instructor is present.

9.1.2.2 A minimum of 6 hours of the 12 hours of continuing education required to renew must be live continuing education. The balance of up to 6 hours may be passive continuing education.

R162-9-2. Education Providers.

9.2. Continuing education providers ~~may~~ are required to apply to the Division for certification of their courses prior to the courses being taught to students.

9.2.1 Approved providers may include accredited colleges and universities, public or private vocational schools, national and state real estate related professional societies and organizations, real estate boards, and proprietary schools.

9.2.2 Those real estate education providers who have been certified for continuing education courses in a minimum of three other states and have specific standards in place for development of their courses and approval of their instructors, and who will provide that criteria to the division of real estate for a one-time approval, may be granted certification of their courses with no further application being necessary.

9.2.3 Licensees may apply to the division for continuing education credit for a non-certified real estate course taken from a national provider that the licensee believes will improve his ability to better protect or serve the public.

9.2.3.1 A licensee may request approval of the course from the division and, for an appropriate fee, the division will review the merits of the non-certified course and determine whether the course meets the criteria for Utah real estate continuing education.

9.2.4. Provided the subject matter of the course taken is not exclusive to the other state, a course approved for continuing education in another state/jurisdiction may be granted Utah credit on a case by case basis.

R162-9-3. Course Certification Criteria.

9.3 Courses submitted for certification shall have significant intellectual or practical content and shall serve to increase the professional competence of the licensee, thereby meeting the objective of the protection of and service to the public.

9.3.1 Three hours shall be comprised of "core course" curricula, the subjects of which will be determined by the division and the Real Estate Commission. The subject matter of these courses will be for the purpose of keeping a licensee current in changing practices and laws. These courses may be provided by the division or by private education providers but, in all cases, will have prior certification by the division.

9.3.1.1 Principal brokers and associate brokers may use the Division's Trust Account Seminar to satisfy the "core" course requirement once every three renewal cycles.

9.3.2 The remaining nine hours shall be in substantive areas dealing with the practice of real estate. Acceptable course criteria shall include the following:

9.3.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; accounting and

taxation as applied to real property; estate building and portfolio management; closing statements; real estate mathematics;

9.3.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; real property exchanging; real estate legislative issues; real estate license law and administrative rules;

9.3.2.3 Land development; land use, planning and zoning; construction; energy conservation;

9.3.2.4 Property management; leasing agreements; accounting procedures; management contracts; landlord/tenant relationships;

9.3.2.5 Fair housing; affirmative marketing; Americans with Disabilities Act;

9.3.2.6 Real estate ethics.

9.3.2.7 Using the computer, the Internet, business calculators, and other technologies to enhance the licensee's service to the public.

9.3.2.8 Offerings concerning sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques, servicing your clients, or similar offerings.

9.3.2.9 Offerings in personal and property protection for the licensee and his clients.

9.3.3 Non-acceptable course criteria shall include courses similar to the following:

9.3.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, or similar offerings;

9.3.3.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings;

9.3.3.3 Meetings held in conjunction with the general business of the licensee and his broker or employer, such as sales meetings, in-house staff or licensee training meetings;

9.3.4 The minimum length of a course shall be one credit hour or its equivalency. A credit hour is defined as 50 minutes within a 60-minute time period.

R162-9-4. Instructor Certification Criteria.

9.4 Instructors for continuing education purposes will be evaluated and approved separately from the continuing education courses. All instructors must apply for certification from the Division not less than 60 days prior to the anticipated date of the first class that they intend to teach.

9.4.1 The instructor applicant must meet the same requirements as a certified prelicensing instructor as defined in R162-8.4.1; and

9.4.2 The instructor applicant must demonstrate knowledge of the subject matter by submission of proof of the following:

9.4.2.1 At least five years experience in a profession, trade or technical occupation in a field directly related to the course which the applicant intends to instruct; or

9.4.2.2 A bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

9.4.2.3 Any combination of at least five years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct, or

9.4.3 The instructor applicant must demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

9.4.3.1 A state teaching certificate or showing successful completion of appropriate college courses in the field of education; or

9.4.3.2 A professional teaching designation from the National Association of Realtors or the Real Estate Educators Association; or

9.4.3.3 Evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

R162-9-5. Submission of Course for Certification.

9.5 An applicant shall apply for consideration of certification of a course to the Division of Real Estate not less than 60 days prior to the anticipated date of the first class.

9.5.1 The application shall include a non-refundable filing fee of \$35.00 and an instructor certification fee of \$15.00 per course per instructor. Both fees should be made payable to the Division of Real Estate.

9.5.2 The application shall be made on the form approved by the Division which shall include the following information:

9.5.2.1 Name, phone number and address of the sponsor of the course, including owners and the coordinator or director responsible for the offering;

9.5.2.2 The title of the course offering including a description of the type of training; for example, seminar, conference, correspondence course, or similar offering;

9.5.2.3 A copy of the course curriculum including a course outline of the comprehensive subject matter. Except for courses approved for specific distance education delivery, the course outline shall include the length of time to be spent on each subject area broken into segments of no more than 15 minutes each, the instructor for each segment, and the teaching technique used in each segment;

9.5.2.4 Three to five learning objectives for every three hours or its equivalency of the course and the means to be used in assessing whether the learning objectives have been reached;

9.5.2.5 A complete description of all materials to be distributed to the participants;

9.5.2.6 The date, time and locations of each course;

9.5.2.7 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

9.5.2.8 Except for courses approved for specific distance education delivery, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

9.5.2.9 The difficulty level of the course categorized by beginning, intermediate or advanced;

9.5.2.10 A sample of the proposed advertising to be used, if any;

9.5.2.11 An instructor application on a form approved by the Division including the information as defined in R162-9.4;

9.5.2.12 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.5.2.13 A statement defining how the course will meet the objectives of continuing education by providing education of a current nature and how it will improve the licensees ability to provide greater protection of and service to the public;

9.5.2.14 A signed statement agreeing not to market personal sales product.

9.5.2.15 A sample of the completion certificate, or the completion certificate required by the division, if any, that will be issued which shall bear the following information:

(a) Space for the licensee's name, type of license and license number, date of course

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date;

(c) Space for signature of the course sponsor and a space for the licensee's signature.

9.5.2.16 Signature of the course coordinator or director.

9.5.3 Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division provided the delivery method of the course has been certified by either the Commission or the Association of Real Estate Licensing Law Officials (ARELLO).

9.5.3.1 If a course is certified by ARELLO, [Ø]only the delivery method will be certified by ARELLO. The subject matter of the course will be certified by the Division.

9.5.3.2. Education providers making application for Distance Education Certification based on ARELLO certification shall provide appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of R162-9.3.2 along with other applicable requirements of this rule.

9.5.3.2.1. Approval under this paragraph will cease immediately should ARELLO certification be discontinued for any reason.

9.5.3.3. Courses approved for distance education delivery shall justify the classroom hour equivalency as is required by ARELLO standards.

9.5.4. The Real Estate Commission reserves the right to consider alternative certification methods and/or procedures for non-ARELLO certified Distance Education Courses.

R162-9-6. Conditions to Certification.

9.6.1 Upon completion of the educational program the course sponsor shall provide a certificate of completion in the form required by the Division.

9.6.1.1 Certificates of completion will be given only to those students who attend a minimum of 90% of the required class time of a live lecture. Within 10 days of the end of the course, the sponsor shall provide to the Division a roster of students and their license numbers for whom certificates were issued.

9.6.2 A course sponsor shall maintain for three years a record of registration of each person completing an offering and any other prescribed information regarding the offering, including exam results, if any.

9.6.2.1 Students registered for a distance education course shall complete the course within one year of the registration date.

9.6.3 Whenever there is a material change in a certified course, for example, curriculum, course length, instructor, refund policy, the sponsor shall promptly notify the Division in writing.

9.6.4 All course certifications shall be valid for one year after date of approval by the Division.

9.6.4.1 If a course is not renewed within three months after its expiration date, the course provider will be required to apply for a new certification for the course.

9.6.4.2 After a course has been renewed for three times, the course provider will be required to make application as for a new certification.

9.6.5 Instructor certifications shall expire December 31 of each year. Instructors who certify for the first time by September 30 shall renew December 31 of that same year. Instructors who certify for the first time after October 1 shall renew December 31 of the following year.

9.6.5.1 To renew instructor certification an instructor must teach, during the year prior to renewal, a minimum of one class in each course for which certification is sought.

9.6.5.2 If the instructor has not taught during the year and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the present level of expertise in the subject matter of the course.

R162-9-7. Course and Instructor Evaluations.

9.7 The Division shall cause the course to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

9.7.1 At the end of each course each student shall complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class in an envelope and the course provider will mail the sealed envelope to the Division within 10 days of the last class.

9.7.2 On a random basis the Division will assign monitors to attend a course for the purpose of evaluating the course and the instructor. The monitors will complete a standard evaluation form provided by the Division which will be returned to the Division within 10 days of the last class.

KEY: continuing education

~~June 20, 2002~~ 2003

Notice of Continuation June 26, 2002

61-2-5.5



Environmental Quality, Water Quality **R317-1-4** Utilization and Isolation of Domestic Wastewater Treatment Works Effluent

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26140

FILED: 04/01/2003, 18:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed change clarifies the requirements proponents must meet in exploring the water rights implications with the State Engineer, for any proposed wastewater reuse project.

SUMMARY OF THE RULE OR CHANGE: Subsection R317-1-4(4.2)(B) is changed to reflect that the evidence required for a proponent to implement a water reuse project is changed from having to show an actual right for the specific proposed application, to an indication, from the State Engineer, that he agrees the underlying rights for the original use of the water are consistent with the new proposed rights.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-5-104(1)(f)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The proposed change is a minor procedural clarification and will not result in any significant costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: The compliance costs for local government may be reduced slightly since the new rule may slightly reduce the costs of preparing an application for a water reuse project.
- ❖ OTHER PERSONS: The compliance costs for other persons may be reduced slightly since the new rule may slightly reduce the costs of preparing an application for a water reuse project.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons may be reduced slightly since the new rule may slightly reduce the costs of preparing an application for a water reuse project.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule may reduce the compliance costs to the proponent of a project by possibly reducing the work required to produce an application for a water reuse project.

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@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/19/2003

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.

R317-1. Definitions and General Requirements.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other

treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Submittal of Reuse Project Plan. If a person intends to reuse or provide for the reuse of treated domestic wastewater directly for any purpose, except on the treatment plant site as described in R317-1-4.6, a Reuse Project Plan must be submitted to the Division of Water Quality. A copy of the plan must also be submitted to the local health department. Any needed construction of wastewater treatment and delivery systems would also be covered by a construction permit as required in section R317-1-2.2 of this rule. The plan must contain the following information. At least items A and B should be provided before construction begins. All items must be provided before any water deliveries are made.

A. A description of the source, quantity, quality, and use of the treated wastewater to be delivered, the location of the reuse site, and how the requirements of this rule would be met.

B. ~~[A description of the water rights for the use of the treated effluent. This will include evidence that the State Engineer has been notified and has agreed that the treatment entity has the right to use the water for the intended use.]~~ Evidence that the State Engineer has agreed that the proposed reuse project planned water use is consistent with the water rights for the sources of water comprising the flows to the treatment plant which will be used in the reuse project.

C. An operation and management plan to include:

1. A copy of the contract with the user, if other than the treatment entity.

2. A labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines. Guidance for distribution systems is available from the Division of Water Quality.

3. Schedules for routine maintenance.

4. A contingency plan for system failure or upsets.

D. If the water will be delivered to another entity for distribution and use, a copy of the contract covering how the requirements of this rule will be met.

4.3 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Likely (Type I)

A. Uses Allowed

1. Residential irrigation, including landscape irrigation at individual houses.

2. Urban uses, which includes non-residential landscape irrigation, golf course irrigation, toilet flushing, fire protection, and other uses with similar potential for human exposure.

3. Irrigation of food crops where the applied reclaimed water is likely to have direct contact with the edible part. Type I water is required for all spray irrigation of food crops.

4. Irrigation of pasture for milking animals.

5. Impoundments of wastewater where direct human contact is likely to occur.

6. All Type II uses listed in 4.4.A below.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. The secondary treatment process should produce effluent in which both the BOD and total suspended solids concentrations do not exceed 25 mg/l as a monthly mean.

2. Filtration, which includes passing the wastewater through filter media such as sand and/or anthracite or approved membrane processes.

3. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 10 mg/l as determined by daily composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The daily arithmetic mean turbidity shall not exceed 2 NTU, and turbidity shall not exceed 5 NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. If the turbidity standard cannot be met, but it can be demonstrated to the satisfaction of the Executive Secretary that there exists a consistent correlation between turbidity and the total suspended solids, then an alternate turbidity standard may be established. This will allow continuous turbidity monitoring for quality control while maintaining the intent of the turbidity standard, which is to have 5 mg/l total suspended solids or less to assure adequate disinfection.

3. The weekly median fecal coliform concentration shall be none detected, as determined from daily grab samples, and no sample shall exceed 14 organisms/100 ml.

4. The total residual chlorine shall be measured continuously and shall at no time be less than 1.0 mg/l after 30 minutes contact time at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Executive Secretary that the alternative process is comparable to that achieved by chlorination with a 1 mg/l residual after 30 minutes contact time. If the effectiveness cannot be related to chlorination, then the effectiveness of the alternative disinfection process must be demonstrated by testing for pathogen destruction as determined by the Executive Secretary. A 1 mg/l total chlorine residual is required after disinfection and before the reclaimed water goes into the distribution system.

5. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than 5 minutes.

2. Any irrigation must be at least 50 feet from any potable water well. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. For residential landscape irrigation at individual homes, additional quality control restrictions may be required by the Executive Secretary. Proposals for such uses should also be submitted to the local health authority to determine any conditions they may require.

4.4 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Unlikely (Type II)

A. Uses Allowed

1. Irrigation of sod farms, silviculture, limited access highway rights of way, and other areas where human access is restricted or unlikely to occur.

2. Irrigation of food crops where the applied reclaimed water is not likely to have direct contact with the edible part, whether the food will be processed or not (spray irrigation not allowed).

3. Irrigation of animal feed crops other than pasture used for milking animals.

4. Impoundments of wastewater where direct human contact is not allowed or is unlikely to occur.

5. Cooling water. Use for cooling towers which produce aerosols in populated areas may have special restrictions imposed.

6. Soil compaction or dust control in construction areas.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. Secondary treatment should produce effluent in which both the BOD and total suspended solids do not exceed 25 mg/l as a monthly mean.

2. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 25 mg/l as determined by weekly composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The monthly arithmetic mean total suspended solids concentration shall not exceed 25 mg/l as determined by daily composite sampling. The weekly mean total suspended solids concentration shall not exceed 35 mg/l.

3. The weekly median fecal coliform concentration shall not exceed 200 organisms/100 ml, as determined from daily grab samples, and no sample shall exceed 800 organisms/100 ml.

4. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

5. At the discretion of the Executive Secretary, the sampling frequency to determine compliance with water quality limits for effluent from lagoon systems used to irrigate agricultural crops, may be reduced to monthly grab sampling for BOD, and weekly grab sampling for fecal coliform, TSS and pH.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be available in case quality requirements are not met.

2. Any irrigation must be at least 300 feet from any potable water well. Spray irrigation must be at least 300 feet from areas intended for public access. This distance may be reduced or increased by the Executive Secretary, based on the type of spray irrigation equipment used and other factors. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. Public access to effluent storage and irrigation or disposal sites shall be restricted by a stock-tight fence or other comparable means which shall be posted and controlled to exclude the public.

4.5 Records. Records of volume and quality of treated wastewater delivered for reuse shall be maintained and submitted monthly in accordance with R317-1-2.7. If monthly operating reports are already being submitted to the Division of Water Quality, the data on water delivered for reuse may be submitted on the same form.

4.6 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

4.7 Other Uses of Effluents. Proposed uses of effluents not identified above, including industrial uses, shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

4.8 Reclaimed Water Distribution Systems. Where reclaimed water is to be provided by pressure pipeline, unless contained in surface pipes wholly on private property and for agricultural purposes, the following requirements will apply. The requirements will apply to all new systems constructed after May 4, 1998, and it is recommended that the accessible portions of existing reclaimed water distribution systems be retrofitted to comply with these rules. Requirements for secondary irrigation systems proposed for conversion from use of non-reclaimed water to use with reclaimed water will be considered on an individual basis considering protection of public health and the environment. Any person or agency that is constructing all or part of the distribution system must obtain a construction permit from the Division of Water Quality prior to beginning construction.

A. Distribution Lines

1. Minimum Separation.

a. Horizontal Separation. Reclaimed water main distribution lines parallel to potable (culinary) water lines shall be installed at least ten feet horizontally from the potable water lines. Reclaimed water main distribution lines parallel to sanitary sewer lines shall be installed at least ten feet horizontally from the sanitary sewer line if the sanitary sewer line is located above the reclaimed water main and three feet horizontally from the sanitary sewer line if the sanitary sewer line is located below the reclaimed water main.

b. Vertical Separation. At crossings of reclaimed water main distribution lines with potable water lines and sanitary sewer lines the order of the lines from lowest in elevation to highest should be; sanitary sewer line, reclaimed water line, and potable water line. A minimum 18 inches vertical separation between these utilities shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the reclaimed water line joints will be equidistant and as far as possible from the water line joints and the sewer line joints. If the reclaimed water line must cross above the potable water line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing

equal to the depth of the potable water line from the ground surface. If the reclaimed water line must cross below the sanitary sewer line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the reclaimed water line from the ground surface.

c. Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in R317-3 for protection of potable water lines. Existing pressure lines carrying reclaimed water shall not be required to meet these requirements.

2. Depth of Installation. To provide protection of the installed pipeline, reclaimed water lines should be installed with a minimum depth of bury of three feet.

3. Reclaimed Water Pipe Identification.

a. General. All new buried pipe, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 522 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape is recommended. Locating wire along the pipe is also recommended.

b. Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Reclaimed Water-- Do Not Drink". The overall width of the tape shall be at least three inches. Identification tape shall be installed 12 inches above the transmission pipe longitudinally and shall be centered.

4. Conversion of existing water lines. Existing water lines that are being converted to use with reclaimed water shall first be accurately located and comply with leak test standards in accordance with AWWA Standard C-600 and in coordination with regulatory agencies. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current State cross connection rules and requirements (R309-102-5), and must meet minimum separation requirements in section 4.8.A.1 of this rule above. If the existing lines meet approval of the water supplier and the Division, the lines shall be approved for reclaimed water distribution. If regulatory compliance of the system (accurate location and verification of no cross connections) cannot be verified with record drawings, televising, or otherwise, the lines shall be uncovered, inspected, and identified prior to use. All accessible portions of the system must be retrofitted to meet the requirements of this rule.

5. Valve Boxes and Other Surface Identification. All valve covers shall be of non-interchangeable shape with potable water covers, and shall have an inscription cast on the top surface stating "Reclaimed Water". Valve boxes shall meet AWWA standards. All above ground facilities shall be consistently color coded (purple, Pantone 512) and marked to differentiate reclaimed water facilities from potable water facilities.

6. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, the Division of Water Quality shall be consulted on acceptable discharge or runoff locations.

B. Storage. If storage or impoundment of reclaimed water is provided, the following requirements apply:

1. Fencing. For Type I effluent, no fencing is required by this rule, but may be required by local laws or ordinances. For Type II effluent, see R317-1-4.4.D.4 above.

2. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Section 4.8.D.6 below. Signs shall be posted on the surrounding fence at minimum 500 foot intervals and at the entrance of each facility. If there is no fence, signs shall be located as a minimum on each side of the facility or at minimum 250 foot intervals or at all accessible points.

C. Pumping Facilities.

1. Marking. All exposed and above ground piping, fittings, pumps, valves, etc., shall be painted purple, Pantone 512. In addition, all piping shall be identified using an accepted means of labeling reading "Caution: Reclaimed Water - Do Not Drink." In a fenced pump station area, signs shall be posted on the fence on all sides.

2. Sealing Water. Any potable water used as seal water for reclaimed water pumps seals shall be protected from backflow with a reduced pressure principle device.

D. Other Requirements.

1. Backflow Protection. In no case shall a connection be made between the potable and reclaimed water system. If it is necessary to put potable water into the reclaimed distribution system, an approved air gap must be provided to protect the potable water system. A reduced pressure principle device may be used only when approved by the Division of Water Quality, the local health department, and the potable water supplier.

2. Drinking Fountains. Drinking fountains and other public facilities shall be placed out of any spray irrigation area in which reclaimed water is used, or shall be otherwise protected from contact with the reclaimed water. Exterior drinking fountains and other public facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist.

3. Hose Bibs. Hose bibs on reclaimed water systems in public areas and at individual residences shall be prohibited. In public, non-residential areas, replacement of hose bibs with quick couplers is recommended.

4. Equipment and Facilities. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps which have been or may be used with reclaimed water, and could be interchangeably used with potable water or sewage, shall be cleaned and disinfected before or after use as appropriate. This disinfection and cleaning shall ensure the protection of the public health in the event of any subsequent use.

5. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, and temporary construction services. The labels shall indicate the system contains reclaimed water that is unsafe to drink.

6. Warning signs. Where reclaimed water is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, as a minimum, 1/2 inch purple letters (Pantone 512) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Reclaimed Water - Do Not Drink". The signs shall include the international symbol for Do Not Drink.

KEY: water pollution, waste disposal, industrial waste, effluent standards

~~January 30, 2003~~

Notice of Continuation October 7, 2002

19-5

Insurance, Administration R590-85

Filing of Rates for Individual Disability Insurance Forms and Individual and Group Medicare Rates

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26129

FILED: 03/31/2003, 09:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to comply with S.B. 100, Insurance Law Amendments, passed in the 2001 Legislative Session, and to make the rule more clear and understandable. (DAR NOTE: S.B. 100 is found at UT L 2001 Ch 116, and was effective April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: This rule is being changed to replace the reference "disability" to "accident and health" as required by S.B. 100, Insurance Law Amendment; The outline of the rule is being corrected to follow the formatting style in the Insurance Code; Appendix I is being incorporated into the body of the rule and Appendix II is being eliminated; Definitions in the body of the rule have been moved to the new Definition section; The use of interest rate in the loss ratio calculations will be required rather than optional. An exemption for long-term care policies that complies with Section R590-148-21, Initial Filing Requirements, has been added to the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-22-605, and 31A-22-620

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to this rule will have no impact on the department's workload. No filings will be required or eliminated and no additional regulatory oversight will be required.

❖ LOCAL GOVERNMENTS: This rule and its changes have no link to local government. The rule deals with the relationship between the insurer and the Insurance Department.

❖ OTHER PERSONS: No additional work will be required of insurers or their agents, nor will these changes reduce their workload. Therefore, there should be no financial impact on the Utah insurance industry or their consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional work will be required of insurers or their agents, nor will these changes reduce their workload. Therefore, there should be no financial impact on the Utah insurance industry or their consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on the insurance industry or any other business in Utah.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/01/2003 at 11:00 AM, State Office Building, Room 5112 (behind the Capitol) Salt Lake City, UT 84114.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-85. Filing of Rates for Individual [Disability]Accident and Health Insurance [Forms]and Individual and Group Medicare Supplement Rates.

R590-85-1. Purpose and Authority.

The purpose of this rule is to implement [Section]Subsections 31A-22-605(4)(e) and 31A-22-620(3)(e) by establishing minimum loss ratios and implementing procedures for the filing of all individual [disability]accident and health insurance and all Medicare supplement premium rates, including the initial filing of rates, and also any subsequent rate changes. This rule is promulgated pursuant to the authority vested in the [Commissioner of Insurance]commissioner by [Section]Subsection 31A-2-201[(4)](3)(a).

R590-85-2. Applicability and Scope.

(1) This rule shall apply to:

(a) all individual [disability]accident and health insurance policies[;] except as excluded under Subsection 2; and

(b) certificates issued under group Medicare supplement policies[;] and subscriber contracts of hospital and medical and dental service corporations delivered or issued for delivery in this state on and after the effective date, except it may[;]

(2) This rule does not apply to[~~individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions which are inconsistent with the requirements of this rule, to the policies being issued to employees or members as additions to franchise plans in existence on the effective date of this rule, nor to individual~~];

(a) policies subject to Chapter 30 that comply with Rule R590-167[;] and

(b) long-term care policies subject to Rule R590-148-21.

(3) The requirements contained in this rule shall be in addition to any other applicable rules previously adopted.

R590-85-3. [General Requirements]Definitions.

(1) "Average Annual Premium Per Policy" means the average computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies, for example, the fractional premium loading may not affect the average annual premium or anticipated loss ratio calculation.

(2) "Conditionally Renewable" (CR) means renewal can be declined by class, geographic area or for stated reasons other than deterioration of health.

(3) "Guaranteed Renewable" (GR) means renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

(4) "Non-Cancelable" (NC) means renewal cannot be declined nor can the rates be revised by the insurance company.

(5) "Optionally Renewable" (OR) means renewal is at the option of the insurance company.

R590-85-4. General Requirements.

[A-](1) When Rate Filing is Required.

(a) Every filing for a policy, certificate[rider,] or endorsement [form] affecting benefits[; which is submitted for filing,] shall be accompanied by a rate filing [unless the rider or]that complies with this rule.

(b) A rate filing is not required for an endorsement [form does not require a change in the rate]that has no rating effect.

(c) Any subsequent addition to or change in rates applicable to the policy [; rider] or endorsement shall also be filed prior to use.

[B-](2) General Contents of All Rate Filings. Each rate submission shall include[~~an~~]

(a) rate sheets for current and proposed rates, if applicable, that are clearly identified;

(b) actuarial memorandum describing the basis on which rates were determined [and shall indicate and describe the calculation of the ratio referred to as the "[;]"that include:

(i) description of the type of policy, benefits, renewability, general marketing methods, and issue age limits;

(ii) description of how rates were determined, including a general description and source of each assumption used;

(iii) estimated average annual premium per policy;

(iv) anticipated loss ratio[;]" of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage. Interest shall be used in the calculation [of these present values only if it is a significant factor in the calculation of this loss ratio. Each rate submission must also include a];

(v) minimum anticipated loss ratio presumed reasonable in R590-85-5(1); and

(vi) signed certification by a qualified actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the state of Utah and ~~that~~ the benefits are reasonable in relation to the premiums~~[-] charged; and~~

(c) a statement that the rates have been filed with and approved by the home state. If approval is not required by the home state, then alternative information which includes a list of the states to which the rates were submitted, the date submitted, and any responses, must be included.

~~C.~~(3) Previously Filed ~~Forms~~ Form. ~~Filings of~~ Filing a rate change for a previously filed policy, Medicare certificate~~[-] rider~~ or endorsement ~~form~~ shall ~~also~~ include the following:

~~1.~~(a) a statement of the scope and reason for the change~~[-] and an estimate of the expected average effect on premiums, including the anticipated loss ratio for the form;~~

~~2.~~(b) a description of how revised rates were determined, including the general description and source of each assumption used;

(c) an estimated average annual premium per policy, before and after the proposed rate increase;

(d) a comparison of Utah and nationwide premiums, either for representative rating cells or of average premiums based on the assumed distribution of business;

(e) a comparison of revised premiums with current scale;

(f) a statement as to whether the filing applies ~~only~~ to new business, ~~only to~~ in-force business, or both, and the reasons;

~~3.~~(g) a history of the experience ~~under existing rates~~, including at least the data indicated in ~~the following Subsection D. The history may also include, if~~ Subsection 4(4) which shows on a yearly and durational basis:

(i) premiums received;

(ii) earned premiums;

(iii) benefits paid;

(iv) incurred benefits;

(v) increase in active life reserves;

(vi) increase in claim reserves;

(vii) incurred loss ratio;

(viii) cumulative loss ratio; and

(ix) any other available ~~and appropriate~~ data the insurer may wish to provide. ~~the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates. Additional data might include: substitution of actual claim run-offs for claim reserves and liabilities; accumulations of experience funds; substitution of net level policy reserves for preliminary term policy reserves; adjustment of premiums to an annual mode basis; or other adjustments or schedules suited to the form and to the records of the company. All additional data must be reconciled, as appropriate, to the required data:~~

~~4. the date and magnitude listed separately for all previous rate changes, if any; and~~

(h) if the rate revision applies to in-force business:

(i) anticipated future loss ratio and description of how it was calculated; and

(ii) estimated cumulative past and future loss ratio and description of how this was calculated;

~~5. for at least the latest year for which the data is available, (i) the number of policyholders residing in the state of Utah, claims incurred or paid for such policyholders, and either premiums in force, premiums earned, or premiums collected for the policyholders~~[-]; and~~~~

(j) the date and magnitude listed separately for all previous rate changes.

~~D.~~(4) Experience Records

~~1.~~(a) ~~Insurers~~ An Insurer shall maintain records of premiums collected, earned premiums, benefits paid, ~~and~~ incurred benefits and reserves for each calendar year, for each policy~~[-] form, and applicable endorsements[-]. [including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves.]~~ The records shall be maintained as required for the Accident and Health Policy Experience Exhibit.

(i) Separate data may be maintained for each ~~rider or~~ endorsement to the extent appropriate.

(ii) Experience under ~~forms~~ policies ~~which~~ that provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued~~[-] except that data for calendar years prior to the most recent five years may be combined.~~

~~2.~~(b) In the case where premium rates vary by state, or other geographical area, insurers are required to tabulate pertinent data as required in Subsection ~~3.D.1.~~(4)(a), which will show their relative experience in Utah or other geographical area containing Utah.

~~E.~~(5) Evaluating Experience Data. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

~~1. Statistical~~(a) statistical credibility of premiums and benefits, for example~~[-] low exposure[-] or low loss frequency[-];~~

~~2. Experience~~(b) experience and projected trends relative to the kind of coverage, for example: persistence, inflation in medical expenses, or economic cycles affecting disability income experience~~[-];~~

~~3. The~~(c) concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations~~[-]; and~~

~~4. The~~(d) the mix of business by risk classification.

~~F. The minimum requirements for making rate filings to determine their reasonableness are listed in Appendix I. This form is also available at the Utah Insurance Department.~~

R590-85-~~14~~5. Reasonableness of Benefits in Relation to Premium.

~~A. New Forms.~~(1) With respect to a new form under which the average annual premium ~~[(as defined below)]~~ per policy is expected to be at least \$200, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown below in this subsection:

(a) Medical Expense Coverage. The minimum loss ratio for:

~~1. medical expense coverages: the loss ratio for~~(i) an optionally renewable ~~forms must be~~ form is 60%~~[-] for~~;

~~(ii) a conditionally renewable [forms the loss ratio must be] form is 55%~~[-] for~~;~~

~~(iii) a guaranteed renewable [forms the loss ratio must be 55% and for non-cancelable forms the loss ratio must be 50%] form is 55%; and~~

(iv) a non-cancelable form is 50%.

(b) Income Replacement. The minimum loss ratio for:

~~2. loss of income and other: the loss ratio for~~(i) an optionally renewable ~~forms must be~~ form is 60%~~[-] for~~;

~~(ii) a conditionally renewable [forms loss ratio must be] form is 55%~~[-] for~~;~~

~~(iii) a guaranteed renewable [forms the loss ratio must be] form is 50%; and [for]~~

~~(iv) a non-cancelable [forms the loss ratio must be] form is 45%.~~

~~(c) For a policy form, including [riders and] endorsements, under which the expected average annual premium per policy is:~~

~~(i) \$100 or more but less than \$200, subtract [5] five percentage points[-]; or [if]~~

~~(ii) less than \$100 subtract 10 percentage points.[-]~~

~~The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (for example, the fractional premium loading may not affect the average annual premium or anticipated loss ratio calculation).[-]~~

~~(d) For Medicare [Supplement]supplement policies, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio [is at least 65%, 75% for group policies]meets the requirements of Rule R590-146-14.~~

~~[Definitions of Renewal Clause~~

~~OR Optionally Renewable: renewal is at the option of the insurance company.~~

~~CR Conditionally Renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health.~~

~~GR Guaranteed Renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.~~

~~NC Non-Cancelable: renewal cannot be declined nor can the rates be revised by the insurance company.~~

~~B.](2) Rate Changes. With respect to [filings]the filing of a rate [changes]change for a previously [approved]filed form, benefits shall be deemed reasonable in relation to premiums provided the [following]standards of this subsection are met[-].~~

~~[4-](a) Both ((a)i) and ((b)ii) as follows shall be at least as great as the standards in [Section]Subsection [4-A-]5(1) and shall include interest in the calculation of benefits, premiums and present values:~~

~~((a)i) [The]the anticipated loss ratio over the entire period for which the changed rates are computed to provide coverage; and~~

~~((b)ii) [The]the ratio of ((i)A) and ((ii)B); where~~

~~((i)A) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the change, and the present value of future benefits[-]; and~~

~~((ii)B) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the change and the present value of future premiums, the present values to be taken over the entire period for which the changed rates are computed to provide coverage, and the accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date [as of which]an accounting [has been]was made to the effective date of the change. [Interest shall be used in the calculation of these accumulated benefits and premiums and present values only if it is a significant factor in the calculation of this loss ratio.]~~

~~[2- An example of the loss ratio required by Section 4.B.1 is illustrated in Appendix II, "Minimum Loss Ratio Test for an Existing Block of Business." Appendix II is available from the Utah Insurance Department.~~

~~3-](b) If an insurer wishes to charge a premium for policies issued on or after the effective date of the change, which is different from the premium charged for the policies issued prior to the change date, then with respect to policies issued prior to the effective date of the change the requirements of [Section 4.B.1]Subsection R590-85-2(a) [above] must be satisfied, and with respect to policies issued on and after the effective date of the change, the standards are the same as in [Section~~

~~4.A.]Subsection 5(1), except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.~~

~~[C- Special Considerations Relating to New Forms and Rate Changes:~~

~~1- Other methods, in addition to that in Subsection B above, may be used to calculate rate changes. However, the minimum anticipated loss ratio thus calculated must be at least as great as the standards in Subsection A above, and the methods must be approved by the Insurance Commissioner.~~

~~2- Anticipated loss ratios lower than those indicated in Subsection A and B above will require justification based on the special circumstances that may be applicable.~~

~~a- Examples of coverages requiring special consideration are as follows:~~

~~(i) accident only;~~

~~(ii) short term non renewable, for example: airline trip; student accident;~~

~~(iii) specified peril, and other special risks.~~

~~b- Examples of other factors requiring special consideration are as follows:~~

~~(i) marketing methods, giving due consideration to acquisition and administration costs and to premium mode;~~

~~(ii) extraordinary expenses, the return of premium rider filings must demonstrate the adequacy of reserves;~~

~~(iii) high risk of claim fluctuation because of the low loss frequency or the catastrophic, or experimental nature of the coverage;~~

~~(iv) product features such as long elimination periods, high deductibles and high maximum limits; and~~

~~(v) the industrial or debit method of distribution.~~

~~D-](c) Companies [are urged to]must review their experience periodically and [to-]file rate changes, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.~~

R590-85-]5-]6. Enforcement Date.

~~The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.~~

R590-85-7. Separability.

~~If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.~~

KEY: insurance law

[January 3, 1996]2003

Notice of Continuation April 24, 2002

31A-2-201

31A-22-605

31A-22-620



Insurance, Administration **R590-119** Surplus Lines Stamping Fee

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 26130

FILED: 03/31/2003, 10:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It is proposed that this rule be repealed since it is being merged into Rule R590-157, Taxation of Surplus Lines Insurance Premiums.

SUMMARY OF THE RULE OR CHANGE: Since this rule and Rule R590-157 deal with surplus lines insurance and their taxes and fees, and they use many of the same code references, it has been decided that they be merged into one rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-15-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The repeal of this rule and merging of its substance into Rule R590-157 will have no effect on the states budget or the workload of the Insurance Department.
- ❖ LOCAL GOVERNMENTS: This rule had nothing to do with the laws and regulations of local government. The stamping fee goes to the department's agent that collects the fees and examines the transactions.
- ❖ OTHER PERSONS: The changes to this rule will have no effect on the insurance industry or their consumers since much of the text and the intent of this rule will be merged into Rule R590-157. There will be no change in the requirements of the surplus lines stamping fee. The fee will be the same as it is now.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will have no effect on the insurance industry or their consumers since much of the text and the intent of this rule will be merged into Rule R590-157. There will be no change in the requirements of the surplus lines stamping fee. The fee will be the same as it is now.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The moving of the text of much of this rule to Rule R590-157 will create no fiscal impact on the insurance industry or any other business. The requirements of this rule will continue in Rule R590-157, Taxation of Surplus Lines Insurance Premiums.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**~~[R590-119. Surplus Lines Stamping Fee.~~****~~R590-119-1. Authority.~~**

~~— This rule is adopted pursuant to Subsection 31A-2-201(3), Utah Code Annotated, which authorizes rules to implement the Insurance Code, and Subsection 31A-15-103(11)(d), U.C.A., which requires the commissioner to adopt a rule specifying the amount of the stamping fee collected by the surplus lines advisory organization.~~

R590-119-2. Purpose and Scope.

~~— A. The purpose of this rule is to comply with the statutory requirement of Subsection 31A-15-103(11)(d), U.C.A., to adopt a rule establishing the amount of the surplus lines transaction stamping fee.~~

~~— B. This rule shall apply to the advisory organization authorized to examine surplus lines transactions under Section 31A-15-111 and Subsection 31A-15-103(11), U.C.A.~~

R590-119-3. Definitions.

~~— In addition to the definitions of Section 31A-1-301, U.C.A., the following definitions shall apply for the purpose of this rule:~~

~~— A. "Stamping Fee" shall mean a percentage of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11), U.C.A.~~

~~— B. "Surplus Lines Transactions" shall mean insurance transactions placed with unauthorized insurers in accordance with Section 31A-15-103, U.C.A.~~

R590-119-4. Rule.

~~— The stamping fee to be collected by the surplus lines advisory organization for the examination described in Subsection 31A-15-103(11)(b) shall be 1/4 of 1% of the policy premium payable in connection with the transaction.~~

R590-119-5. Separability.

~~— If any provision of this Rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected.~~

KEY: insurance law

1993

Notice of Continuation September 17, 2002

31A-15-103]



Insurance, Administration
R590-147
Annual Statement Instructions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26132

FILED: 03/31/2003, 14:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to eliminate foreign insurers from the annual statement filing requirements with the State of Utah.

SUMMARY OF THE RULE OR CHANGE: The main changes to this rule will include: the elimination of the requirement for foreign insurance companies to file their annual statements with the Utah Insurance Department if they are already filing with the National Association of Insurance Commissioners (NAIC). Domestic insurers will be required to file two hard copies of all documents with the department. New requirements regarding the "timely filing" of information are found in Subsection R590-147-4(4). The checklist is eliminated from the filing requirement instructions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and 31A-4-113

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Last year the renewal process required the department to hire three part time people for 75 hours to process around 1500 annual renewal statements. This was at a cost of \$548.25 to the department. With the elimination of the requirement of 1500 insurers to file their annual statement information, the department will no longer need to hire part time help.

❖ LOCAL GOVERNMENTS: The rule will have no fiscal impact on local government. The laws and requirements of this rule do not interact with local government laws.

❖ OTHER PERSONS: The elimination of the requirement for the 1500 foreign insurers to file their annual statements with the department will save them money in printing, binding and mailing of one annual statement to Utah. We are one of the first states to eliminate this requirement so the savings to insurance companies will be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The elimination of the requirement for the 1500 foreign insurers to file their annual statements with the department will save them money in printing, binding and mailing of one annual statement to Utah. We are one of the first states to eliminate this requirement so the savings to insurance companies will be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Until other states eliminate the requirement to file annual statement, the financial savings to insurers will be minimal.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST

SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-147. Annual Statement Instructions.****R590-147-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201, and pursuant to the specific authority of Section 31A-4-113.

R590-147-2. Scope.

This rule applies to all insurers required to file an annual statement with the commissioner in this state.

R590-147-3. Definitions.

(1) For the purpose of this rule "Insurer" includes all licensees who are licensed under Chapters 5, 7, 8, 9, 14 or 15 of Title 31A of the Utah Code.

(2) For purposes of this rule "Timely Filed" means that [that] the item being filed is postmarked on or before its due date or if the item is placed for delivery by a commercial delivery service, the delivery instructions are dated on or before the date the item is due to be filed and all required schedules, exhibits and documents are attached.

R590-147-4. Rule.

(1) All insurers shall file their annual statement with the [department on the form adopted by the] National Association of Insurance Commissioners ("NAIC") on the form adopted by the NAIC.

The statement shall be prepared in accordance with the latest edition of the annual statement instructions, and the accounting practices and procedures manual published by the NAIC. Annual statement filings are not complete until all supplemental schedules, exhibits and documents are filed as required by the instructions or as otherwise indicated by this rule[-], including the following: [

~~(2) All insurers authorized or recognized to do business in the State of Utah that file an annual statement and all supplemental schedules, exhibits and documents with the NAIC, are not required to file the following with the department with the filing due March 1, 2002:]~~

- (a) Actuarial Opinion;
- (b) Management's Discussion and Analysis;
- (c) SVO Compliance Certification; and[-]
- (d) Annual Audited Financial Reports.

(2) Domestic insurers shall also file two hard copies of all documents required by Subsection 4(1) with the department.

(3) Foreign insurers shall NOT file a hard copy of documents required by Subsection 4(1) with the department, unless specifically requested by the commissioner.

(~~3~~4) ~~The~~ For foreign insurers, the department will consider the ~~items indicated in Subparagraphs (2)(a) through (d) of this section of the rule~~ annual statement filings to be filed timely with the department if they are timely filed with the NAIC. For domestic insurers, the department will consider the annual statement filings to be filed timely if they are filed timely with both the NAIC and with the department. If ~~these items or~~ any ~~of the other~~ items required to be filed with the NAIC ~~or the department~~ are not filed ~~with the NAIC~~ by the date they are due without an ~~approved~~ extension ~~approved by the domiciliary state~~, or are filed ~~late without an~~ after the expiration of any approved extension, the department will consider the annual statement filing ~~with the department~~ to be incomplete ~~and~~ filed late, or not filed, ~~with~~ and the department ~~and will~~ may impose sanctions permitted by law.

(~~4~~5) The dates by which annual statements and supplemental schedules, exhibits, documents or electronic filings are to be made shall be the date specified in the annual statement instructions and department filing ~~check lists~~ instructions. These instructions ~~and check lists~~ may be found on the department's website.

R590-147-5. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances ~~may~~ shall not be affected thereby.

KEY: insurance

~~February 21, 2002~~ 2003

Notice of Continuation February 21, 2002

31A-2-201

31A-4-113

Insurance, Administration

R590-157

Taxation of Surplus Lines Insurance Premiums

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26131

FILED: 03/31/2003, 10:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule changes are a result of the merging of Rule R590-119, Surplus Lines Stamping Fee, into this rule.

SUMMARY OF THE RULE OR CHANGE: Requirements relative to the surplus lines stamping fee, its amount and collection requirements, are being added to this rule. The Authority Section includes a summary of the authority in each code citation noted. It also notes that Rule R590-119, the Surplus Lines Stamping Fee is being superseded. Section 2, Purpose and Scope, is being broadened to include an authorized entity

to examine surplus lines transactions and collect stamping fees and premium taxes. The Definitions Section will include new definitions for Stamping Fee, Surplus Line Association, Surplus Lines Producer and Surplus Lines Insurer. Section 4, Stamping Fee Amounts, is new and prescribes the amount of the stamping fee and the late fee amount. Section 5, Authorized Agency, includes the requirement of the Surplus Lines Association to examine and collect the surplus line stamping fee. This was already their duty as noted in Rule R590-119-4. In Section 6, Accounting Procedures, the term "broker" is being replaced with "producer" as a result of S.B. 100, Insurance Law Amendments, passed in 2001. The annual reporting date for the fee and tax is changed from May to January to put it on a fiscal year basis. The rule also now requires the Surplus Lines Association provide an annual fiscal year report to the commissioner 30 days after the end of the association's fiscal year (this is already being done). A new "Enforcement Date" section has been added to the rule giving those affected by the rule 45 days after the rule goes into effect to comply with its requirements. (DAR NOTE: S.B. 100 is found at UT L 2001 Ch 116, and was effective April 30, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201, 31A-3-303, and 31A-15-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The changes to this rule will have no effect on the state's budget since the tax and fee noted in the rule have not changed, they are just a part of the same rule instead of two separate ones.
- ❖ LOCAL GOVERNMENTS: The rule will have no fiscal impact on local government. The Surplus Lines fees go to the agent of the department that collects the fees and examine the transactions, and the surplus lines premium tax goes to the general fund. Neither the fee or tax have changed as a result of these changes.
- ❖ OTHER PERSONS: The changes to this rule will have no effect on the insurance industry or consumers since it is just the combining of two rules already in existence. Neither the surplus lines fee or tax have changed as a result.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will have no effect on the insurance industry or consumers since it is just the combining of two rules already in existence. Neither the surplus lines fee or tax have changed as a result.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule are a result of the merging of two rules. None of the changes will result in a fiscal impact on the insurance industry or their consumers.

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

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

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-157. ~~[Taxation of]~~ Surplus Lines Insurance ~~[Premiums]~~ Premium Tax and Stamping Fee.

R590-157-1. Authority.

This rule is promulgated pursuant to the general ~~[rule making]~~ rulemaking authority vested in the commissioner by Section 31A-2-201, ~~[Utah Code, and pursuant]~~ which authorizes rules to implement the ~~[specific]~~ Insurance Code. Specific rulemaking authority is granted by ~~[Subsections]~~ Subsection 31A-3-303(2) to prescribe accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax, and Subsection 31A-15-103(11)(d) ~~[, U.C.]~~ to specify the stamping fee amount and how it is to be collected.

This rule supersedes Rule R590-~~[106, Taxation of]~~ 119 Surplus Lines ~~[Insurance]~~ Stamping Fee.

R590-157-2. Purpose and Scope.

A. The purpose of this rule is to prescribe;

~~_____~~ (1) the amount of the stamping fee and;
~~_____~~ (2) the accounting and reporting forms and procedures to be used in calculating surplus lines premium taxes and ~~[paying the surplus lines premium tax required by Section 31A-3-301, U.C. U.C., on insurance transactions made pursuant to Part I of Chapter 15, Title 31A]~~ stamping fees; and

~~_____~~ (3) the authorized entities to examine the transaction and collect and receive the tax and fee.

B. This rule applies to:

~~_____~~ (1) insurers, ~~[all brokers involved]~~ surplus lines producers, and policyholders who are jointly and severally liable for the payment of the premium taxes ~~[required under Section 31A-3-301, U.C.]~~ and stamping fee;

~~_____~~ (2) the advisory organization authorized to examine surplus transactions; and

~~_____~~ (3) the commissioner's authorized agent to collect the stamping fee and premium tax and remit the premium tax to the commissioner.

R590-157-3. Definitions.

For the purpose of this ~~[Rule]~~ rule the commissioner adopts the definitions ~~[as particularly]~~ set forth in Section 31A-1-301, ~~[U.C.,]~~ and ~~[in addition thereto,]~~ the following:

A. ~~["Surplus Line Association" or "Association" means the Surplus Line Association of Utah, which is the advisory organization authorized by the commissioner under -]~~ "Stamping fee" means a

~~percentage of policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(e), U.C., and Rule R590-156].~~

B. ~~["Surplus [lines broker]~~ Line Association" or "Association" means the Surplus Lines Association of Utah.

C. ~~["Surplus lines producer" means a person licensed under Subsection 31A-23-204(3) to place insurance with eligible unauthorized [insurers in accordance with Section 31A-15-103, U.C.]~~

~~_____~~ C. "Surplus lines insurer" means an eligible unauthorized insurer doing business in this state through surplus lines brokers; ~~[insurers in accordance with Section 31A-15-103.]~~

D. "Surplus lines insurer" means an unauthorized foreign or alien insurer subject to the limitations and requirements of Section 31A-15-103, ~~[U.C.,]~~ doing business in this state through surplus lines producers, and ~~[is eligible due to inclusion -]~~ included on the commissioner's "recognized" list.

~~[D-]E.~~ "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

~~[E-]F.~~ "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4-1/4% of gross surplus lines premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions, ~~[as prescribed by Section 31A-3-301, U.C.]~~

~~[F-]G.~~ "Surplus lines transaction" means the placement with a surplus lines insurer of an insurance policy or certificate of insurance. It also means any cancellation, endorsement, audit, or other adjustment to the insurance policy that affects the premium.

R590-157-4. ~~[Authorization]~~ Stamping Fee Amounts.

~~_____~~ A. The surplus lines stamping fee is 1/4 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d).

~~_____~~ B. Late surplus lines stamping fee payments are subject to late fees of 25% of the stamping fee due plus 1 1/2% per month from the time of default until full payment of the fee.

R590-157-5. Authorized Agency.

A. The commissioner hereby authorizes the Surplus Line Association of Utah to act as his agent ~~[in]~~ for:

~~_____~~ (1) collecting and ~~[receiving]~~ remitting the premium tax imposed by Section 31A-3-301 ~~[, U.C.,]~~ on insurance transactions described in Sections 31A-15-103, 31A-15-104, and 31A-15-106.

~~_____~~ (2) examining surplus lines transactions under Section 31A-15-111; and

~~_____~~ (3) collecting the stamping fee authorized under Section 31A-15-103(11).

B. The Surplus Line Association shall remit all premium taxes it collects in accordance with the procedures of Section ~~[5]~~ 6.

R590-157-~~[5]~~ 6. Accounting Procedures.

A. Within 60 days of the effective date of a surplus lines transaction, the surplus lines ~~[broker]~~ producer must file with the Surplus Line Association a copy of the policy, binder, certificate, endorsement, or other documentation sufficient to identify the subject of the insurance; the coverage, conditions, and term of insurance; the type of transaction; the effective date; the premium charged; the premium taxes payable; the name and address of the policyholder and the insurer.

B. The Surplus Line Association may prescribe the forms and procedures to be used by surplus lines ~~brokers~~ producers in fulfilling Section ~~5(A)~~ R590-157-5.

C. The Surplus Line Association shall prepare a monthly statement of surplus lines transactions reported during the preceding 30 days for each surplus lines ~~broker~~ producer. This statement shall list the transactions and premium amounts reported, the ~~calculated~~ surplus lines premium taxes due; under 31A-3-301, and the ~~calculated~~ stamping fee due ~~as prescribed by~~ under Subsection 31A-15-103(11)(d); ~~U.C., and Rule R590-119~~.

D. The monthly statement shall be mailed to the surplus lines ~~brokers~~ producers by the 5th day of each month.

E. By the 25th day of each month the surplus lines ~~broker~~ producer shall remit payment in full to the Surplus Line Association ~~for the surplus lines premium tax and amounts due shown on the stamping fee~~ monthly statement. ~~Prior to remittance premium~~ Premium taxes and stamping fees shall be held in trust by the surplus lines ~~broker~~ producer until remitted to the Surplus Lines Association.

F. Within three days of the date received, the Surplus Line Association shall deposit in a qualified depository approved by the Office of the State Treasurer, for the credit of the Utah Insurance Department, all funds received as payment of the surplus lines premium tax.

G. For tax credits for return premiums, which are not offset by charges in the monthly ~~billing statement~~, the Surplus Line Association shall submit a request for payment to the Insurance Department. A reimbursement will be issued to the designated person by the Insurance Department pursuant to the Division of ~~Finance~~ Finance's policies and procedures.

H. The Surplus Line Association shall prepare ~~monthly and annual~~ the following reports for the benefit of the commissioner.

(1) ~~The~~ A monthly report shall ~~list the premiums reported and taxes deposited for the credit of the Insurance Commissioner~~ be prepared on the basis of both surplus lines producers and surplus lines insurers and shall list all premiums reported and taxes paid during the previous month. This report shall be submitted by the 15th of the subsequent month.

(2) ~~The~~ An annual report shall be prepared on the basis of both surplus lines ~~brokers~~ producers and surplus lines insurers and shall list all ~~policies written,~~ premiums reported and taxes paid during the previous calendar year. This report shall be submitted to the commissioner by ~~May 1~~ January 31 of each year.

(3) An annual financial report including profit and loss and balance sheet for the Surplus Lines Association shall be submitted to the commissioner within 30 days of the end of the Association's fiscal year.

R590-157-~~6~~7. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

R590-157-8. Severability.

If any provision of this rule of the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance fee, taxes

~~1993~~ **2003**

Notice of Continuation March 27, 1998

31A-2-201

31A-3-303

31A-15-103



Insurance, Administration

R590-215

Permissible Arbitration Provisions for Individual and Group Health Insurance

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26133

FILED: 03/31/2003, 15:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make changes to the rule that were intended to be made in the formal rulemaking filing sent to the Division of Administrative Rules November 15, 2002.

SUMMARY OF THE RULE OR CHANGE: In Subsection R590-215-4(4) the word "exclusive" was not eliminated from the rule as intended. The same is true in Subsection R590-215-5(3).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201, and 29 CFR 2560.503-1

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This change will not result in a cost or savings to the department or increased workload. Insurers will not be required to file revised forms or rates as a result of these changes.
- ❖ **LOCAL GOVERNMENTS:** This rule and its changes have no link to local government. The rule deals with the relationship between the insurer and the Insurance Department.
- ❖ **OTHER PERSONS:** The changes to this rule will not result in a cost or savings to the insurance industry. It does not require them to file anything with the department or change their procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will not result in a cost or savings to the insurance industry. It does not require them to file anything with the department or change their procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on the insurance industry doing business in Utah or any other local businesses.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/17/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance.

R590-215-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Section 31A-2-201(3) and incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective July 1, 2002, and excluding 2560.503-1(a). This federal regulation may be obtained from the Utah Insurance Department.

R590-215-2. Purpose.

This rule recognizes arbitration as an acceptable method of alternative dispute resolution with regards to health benefit plans. This rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

- (1) define the term "permissible arbitration provision" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2); and
- (2) provide guidelines upon which disclosure of a contract arbitration provision is to be made.

R590-215-3. Applicability and Scope.

- (1) This rule applies to the following individual and group policies issued or renewed on or after July 1, 2002:
 - (a) income replacement policies; and
 - (b) health benefit plans.
- (2) Long Term Care and Medicare supplement policies are not considered health benefit plans.

R590-215-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301, 78-31a-2, 29 CFR 2560.503-(m), and the following:

(1) "Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan. With respect to individual or group health benefit plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(2) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(3) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

(4) "Voluntary binding arbitration" means a contract provision that, at the [exclusive] election of the insured, requires an insurer to submit to arbitration as set forth in such contract, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-215-5. Rule.

(1) Compulsory binding arbitration is not a permissible arbitration provision.

(2) Compulsory non-binding arbitration is a permissible arbitration provision when utilized as an internal review of an adverse benefit determination under 29 CFR Subsection 2560.503-1(c)(4).

(3) Voluntary binding arbitration, at the [exclusive] election of an insured party, is a permissible arbitration provision, and may only be used as a voluntary level of review under 29 CFR Subsection 2560.503-1(c)(3)(iii).

(4) Policy forms containing compulsory binding or voluntary binding arbitration provisions for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

(5) Each application pertaining to a individual or group health benefit plan, and income replacement policy, which contains a voluntary arbitration provision, must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF, THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR, A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. THE COMPANY SHALL BEAR THE COSTS OF ARBITRATION, FILING FEES, ADMINISTRATIVE FEES AND ARBITRATOR FEES. OTHER EXPENSES OF ARBITRATION, INCLUDING, BUT NOT LIMITED TO: ATTORNEY FEES, EXPENSES OF DISCOVERY, WITNESSES, STENOGRAPHER, TRANSLATORS, AND SIMILAR EXPENSES, WILL BE BORNE BY THE PARTY

INCURRING THOSE EXPENSES. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES, IF ALLOWED BY STATE LAW, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policyholder and, shall be contained in the certificate of insurance or other disclosure of benefits.

(6) A voluntary binding arbitration provision may not preclude a dispute from being resolved through any small claims court having jurisdiction.

(7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act," Title 78, Chapter 31a.

(8) Any such agreement for arbitration shall not obligate an insured to pay for the arbitration in accordance with 29 CFR 2560.503-1(c)(v).

(9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-215-6. 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.

R590-215-7. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

KEY: health insurance arbitration

~~January 9, 2003~~

31A-2-201

29 CFR 2560.503-1



Natural Resources, Parks and Recreation

R651-301

State Recreation Fiscal Assistance Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR File No.: 26127

FILED: 03/27/2003, 16:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment changes the "Recreational Trails" to reflect the new title of "Non-Motorized Trails", and to change the days of notice to the division by a project sponsor regarding funds that

may be advanced. This now is changed from 30 days to 120 days to match the existing Recreational Trails Act of 1992. Also reference S.B. 52.

SUMMARY OF THE RULE OR CHANGE: Recreational Trails is now commonly referred to as Non-Motorized Trails and this change will make the change across the board. The only thing left as Recreational Trails is the Advisory Council. No more than 50% of the program funds may be advanced to the project sponsor, and only after official notice to the Division is made by the sponsor that project costs will be incurred within 120 days rather than 30.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-11a-501 and 63-11-17.8

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This is a change in notification of a sponsor and changing the title of the former Recreational Trails Program to Non-Motorized Trails Program to reflect the changes in the Recreational Trails Act of 1992.

❖ LOCAL GOVERNMENTS: There will be no anticipated cost or savings to local government. These are state programs and no expenditure is expected.

❖ OTHER PERSONS: The sponsors will have to give longer notice in order to receive up to 50% of program funds. It is a change in notification only and there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs associated with this rule change, it is to bring current the Rule that is already in effect.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department believes that this change will have no fiscal impact on businesses.

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 deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Mary Tullius, Deputy Director

R651. Natural Resources, Parks and Recreation.**R651-301. State Recreation Fiscal Assistance Programs.****R651-301-1. Authority and Effective Date.**

(a) These rules are established as required by 63-11a-501, and 63-11-17.8, and apply to the following state funded recreation fiscal assistance programs:

- (1) Riverway Enhancement
- (2) ~~Recreational Trails~~ Non-Motorized Trails
- (3) Off Highway Vehicles

(b) These rules govern procedures for fiscal assistance applications, priorities, and project selection criteria commencing on or after April 15, 2000.

R651-301-2. Definitions.

(a) "Advisory Council" means the Riverway Enhancement, Recreational Trails, and Off-Highway Vehicle Advisory Councils.

(b) "Board" means the Utah Board of Parks and Recreation.

(c) "Division" means the Utah Division of Parks and Recreation.

(d) "High density population" means areas in the state where people are grouped in communities, towns, or cities, and where the majority of residents live in the area, regardless of community size.

(e) "Public comment" means a survey of residents, bond election, written comments, or open public meeting designed to give input to the decision making process from the general public.

(f) "River or stream" means a natural watercourse flowing in a more or less permanent bed or channel, between defined banks or walls, with a current which is continuous in one direction, and which does not lose its character as a watercourse even though it may break and disappear.

R651-301-3. Fiscal Assistance Application Process.

(a) Deadline for submission of applications is May 1 annually. Submissions post-marked on or before that date will be eligible for funding consideration.

(b) Applications are to be submitted on a form to be provided by the Division. Eligible applicants will be notified by mail of the application deadline and procedures at least 45 days prior to the deadline.

(c) Applications must be submitted to:
Utah Division of Parks and Recreation

Attention: Grants Coordinator
1594 West North Temple, Suite 116
Salt Lake City, Utah 84114-6001

(d) Eligible applicants include:

- (1) Riverway Enhancement Program
 - (i) State agencies
 - (ii) Cities and towns
 - (iii) Counties
 - (iv) Special Improvement Districts
- (2) ~~Recreational Trails~~ Non-Motorized Trails Program
 - (i) Federal government agencies
 - (ii) State agencies
 - (iii) Cities and towns
 - (iv) Counties
 - (v) Special Improvement Districts
- (3) Off-Highway Vehicle Program
 - (i) Federal government agencies
 - (ii) State agencies
 - (iii) Cities and towns
 - (iv) Counties
 - (v) Organized User Group (as defined in U.C.A. 41-22-2(15))

(4) Centennial Non-Motorized Paths and Trail Crossings Program

- (i) State agencies
- (ii) Cities and towns
- (iii) Counties

R651-301-4. Fiscal Assistance Program Requirements.

(a) All programs require a 50/50 match.

(b) An applicant's match may be in the form of cash, force account labor, equipment, or materials; donated materials and labor or donation of land from a third party to be exclusively used for the proposed project. The value of donated labor will be based on a general laborer rate, unless the person is professionally skilled in the work being performed on the project. When this is the case, the wage rate normally paid for performing this service may be charged to the project. A general laborer's wages may be charged in the amount of that which the project sponsor pays its own employees having similar experience and performing similar duties. Donated materials and land will be valued at the fair market value based on an appraisal that is approved by the Division.

(c) Riverway Enhancement fiscal assistance must be along a river or stream that is impacted by high density population or is prone to flooding.

(d) Recreational trails that are on lands under the control of the Division must comply with Section 63-11a-203, and require public hearings in the area of proposed trail development.

(e) Program funds may be used for land acquisition, development, and planning. Off-highway vehicle funds may also be used for operation and maintenance. No administrative or indirect costs are allowed.

(f) Not more than 50% of program funds may be advanced to the project sponsor, and only after official notice to the Division is made by the sponsor that project costs will be incurred within ~~30~~120 days.

(g) No more than 50% of the monies available to the Centennial Non-Motorized Paths and Trail Crossings Program in a fiscal year may be allocated to a single project, except upon unanimous recommendation of the Recreational Trails Advisory Council.

(g) The balance of funding shall be provided to sponsors at the project completion, and only after a final accounting is made to the Division of total project costs.

R651-301-5. Project Selection Procedures.

(a) Advisory Councils shall make recommendations to the Division concerning the project selection criteria and the priority of projects selected for funding.

(b) The Division shall review all eligible applications, evaluate projects based on priority criteria, and submit project description information, proposed funding recommendations and justification to the appropriate Advisory Council for review and comments.

(c) The Board shall select and approve projects based on recommendations from the Division and Advisory Councils, which may be in the form of joint or separate recommendations.

R651-301-6. Priorities and Project Selection Criteria.

(a) All applicants shall be evaluated on administrative considerations, such as prior project performance and proper use of funds.

(b) All applications shall be evaluated on meeting legislative intent, and meeting outdoor recreation needs.

(c) All applications shall be evaluated on cooperative efforts of the project among agencies and user groups. This includes, but is not limited to, cooperative funding.

(d) Location of the proposed project site shall be evaluated based on proximity to the majority of users, adequacy of access to the site, safety, linking similar existing facilities, and convenience to users.

(e) Projects that promote multiple season use for maximum year-round participation and multiple uses or users shall be encouraged.

(f) Planning, design, and programs for the Riverway Enhancement and ~~Recreational Trails~~ Non-Motorized Trails programs shall be evaluated to encourage:

(1) Innovative or unique design features that enhance the environment and recreation opportunities.

(2) Linking access to natural, scenic, historic, or recreational areas of statewide significance.

(3) Minimizing adverse effects on wildlife, natural areas, and adjacent landowners.

(4) Harmony with existing and planned land uses.

(5) Masterplanning.

KEY: recreation, fiscal[±], assistance[±]

~~July 4, 2000~~ 2003

Notice of Continuation July 21, 1998

63-11a-501

63-11-17.8



Natural Resources, Parks and Recreation

R651-410

Off-Highway Vehicle Safety Equipment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26128

FILED: 03/27/2003, 17:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adds a sentence which clarifies the use of safety flags on OHV's at Coral Pink Sand dunes, Big Sand Mountain Recreation Management area, and the Little Sahara Special Recreation Management area; that these flags meet the requirements of Section 41-22-10.7. This adds a sentence to the actual rule and does not leave it up to the "catchline" to define the change.

SUMMARY OF THE RULE OR CHANGE: This amendment adds a clarifying statement to the body of the rule that defines the code section addressing safety flags and description of same and making the sentence part of the body of the rule and not the catchline which is not enforceable as part of the rule text.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-22-31, 41-22-32, and 41-22-33

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no anticipated cost or savings to the State budget as this line is being added to become part of the text in describing the safety flags and referring to the UCA section describing such flags.

❖ LOCAL GOVERNMENTS: Local government is not affected by this rule and therefore there is no cost or savings to them.

❖ OTHER PERSONS: Other persons are not affected by this sentence being added to the rule. Therefore, there is no anticipated cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance cost for affected persons, of this sentence being added to the existing rule. This sentence is added for clarification and reference only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department believes that this change will have no fiscal effect on businesses.

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 deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Mary Tullius, Deputy Director

R651. Natural Resources, Parks and Recreation. R651-410. Off-Highway Vehicle Safety Equipment.

R651-410-1. Safety Flags Required on ~~[d]~~ Designated Sand Dunes.

Safety flags that meet the requirements of UCA Section 41-22-10.7, are required to be mounted on OHV's at Coral Pink Sand Dunes, Big Sand Mountain Recreation Management Area, and the Little Sahara Special Recreation Management Area, which areas have boundaries as defined below:

A. Coral Pink Sand Dunes.

Beginning at the junction of Hancock Road and San Springs Road, thence west along Hancock Road to Yellowjacket Road; thence south along Yellowjacket Road to Coral Pink Sand Dunes State Park South Boundary Road. Thence south along the South Boundary Road to the Utah-Arizona state line. Thence east along the Utah-Arizona state[-]line to the east side of Moquith Mountain. Thence north along the east side of Moquith Mountain to Sand Springs Road. Thence north along Sand Springs Road to the junction of Hancock Road and Sand Springs Road.

B. Big Sand Mountain Special Recreation Management Area - Sand dunes located within that portion of Washington County bounded by the following: Starting at the intersection of the county-

maintained Washington Dam road and the main jeep road that runs east of and parallel to Warner Ridge. Thence south along the main jeep road to its intersection with the Warner Valley road. Thence south and east along the Warner Valley road to its intersection with the Hurricane Cliffs road. Thence north along the Hurricane Cliffs road to the north township line of Township 43 South, Salt Lake Meridian. Thence west along the township line and public land boundary to the southeast corner of Section 31, Township 42 South, Range 13 West, Salt Lake Meridian. Thence north along the section line and thereafter following the boundary of the proposed San Hollow Recreation Area to the principal OHV access road off the northwest corner of the recreation area. Thence northwest along the principal OHV access road to the Washington Dam road. Thence west along the Washington Dam road to the beginning.

C. Little Sahara Special Recreation Management Area - Sand dunes located within that portion of Juab County lying within the fenced boundary of the Little Sahara Recreation area.

KEY: parks, off-highway vehicles

~~[April 1]~~, 2003

41-22-31

41-22-32

41-22-33



Pardons (Board Of), Administration
R671-201
Original Parole Grant Hearing Schedule
and Notice

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26120

FILED: 03/26/2003, 12:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment makes wording changes to improve the accuracy of the text and clarify the process.

SUMMARY OF THE RULE OR CHANGE: The wording changes clarify third degree as a felony offense and removes Class A from the 12-month timeline because it does not apply to these cases. Class A cases will likely expire or terminate before the end of 12 months.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-7

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Rule R671-201 outlines when an inmate is eligible for a hearing based on the number of months served. There is no anticipated cost to the state by amending this rule.

❖ LOCAL GOVERNMENTS: Local government does not participate in the process nor is there a cost passed on to local government.

❖ OTHER PERSONS: The amendment of this rule does not effect persons and there is no anticipate cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R671-201 is an established rule and the amendment does not significantly change the process or the functions currently in practice based on Section 77-27-2. There is no compliance cost associated for the effected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department head believes this rule amendment is necessary to accurately state the process as it is outlined in statute. There is no cost to business by amending this rule.

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

PARDONS (BOARD OF)

ADMINISTRATION

Room 300

448 E 6400 S

SALT LAKE CITY UT 84107-8530, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Mike Sibbett, Chairman

R671. Pardons (Board of), Administration.

R671-201. Original Parole Grant Hearing Schedule and Notice.

R671-201-1. Schedule and Notice.

Within six months of an offender's commitment to prison the Board will give notice of the month and year in which the inmate's original hearing will be conducted. A minimum of one week (7 calendar days) prior notice should be given regarding the specific day and approximate time of such hearing.

All [~~sex offenses, all first degree felonies, and all second and third degree~~]felonies, where a life has been taken, will be routed to the Board as soon as practicable for the determination of the month and year for their original hearing date. The Board will only consider information available to the court at the time of sentencing. [

~~— An inmate who is serving a sentence of up to fifteen years] All first degree felonies, where death is not involved, will be eligible for a hearing after the service of [nine months]three years. [~~

~~— An inmate who is serving a sentence of up to five years including Class A Misdemeanor commitments.] All second degree felonies, where death is not involved, will be eligible for a hearing~~

after the service of ~~[ninety days]~~ six months unless the second degree is a sex offense and in those cases will be eligible for a hearing after the service of eighteen months.

All third degree felonies, where a death is not involved, and all class A misdemeanors, will be eligible for a hearing after the service of three months unless the third degree felony is a sex offense and in those cases will be eligible for a hearing after the service of twelve months.

Excluded from the above provisions are inmates who are sentenced to death or life without parole.

An inmate may petition the Board to calendar him/her at a time other than the usual times designated above or the Board may do so on its own motion. A petition by the inmate shall set out the special reasons which give rise to the request. The Board will notify the petitioner of its decision in writing as soon as possible.

KEY: parole, inmates
~~February 18, 1998~~ **2003**

Notice of Continuation October 16, 2002
77-27-7



Public Safety, Highway Patrol
R714-159
Vehicle Safety Inspection
Apprenticeship Program Guidelines

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26119

FILED: 03/26/2003, 12:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish program guidelines for a school district that elects to implement a vehicle safety inspection apprenticeship program for high school students in accordance with Title 53, Chapter 8, Part 2.

SUMMARY OF THE RULE OR CHANGE: The rule provides definitions, apprenticeship requirements, sponsor requirements, apprentice training, and a probationary period for certified apprentices.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-8-204(5)(e)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This rule will have no impact on the state budget because it will not require the department to do anything it is not already doing.
- ❖ **LOCAL GOVERNMENTS:** This rule will have no impact on local government because local government is not involved in the apprenticeship program.
- ❖ **OTHER PERSONS:** School districts that choose to establish an apprenticeship program may experience an increase in curriculum costs, but such costs can be minimized by utilizing an Applied Technology Center (ATC) to do the training.

Apprentices can receive the required training from an ATC by paying a fee of \$70.

COMPLIANCE COSTS FOR AFFECTED PERSONS: School districts that choose to establish an apprenticeship program may experience an increase in curriculum costs, but such costs can be minimized by utilizing an Applied Technology Center (ATC) to do the training. Apprentices can receive the required training from an ATC by paying a fee of \$70.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Inspection stations who utilize apprentices can realize a savings because they will be able to pay an apprentice minimum wage in accordance with federal guidelines on apprenticeships.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Greg Lundell at the above address, by phone at 801-284-5554, by FAX at 801-284-5544, or by Internet E-mail at glundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Robert Flowers, Commissioner

R714. Public Safety, Highway Patrol.

R714-159. Vehicle Safety Inspection Apprenticeship Program Guidelines.

R714-159-1. Purpose.

The purpose of this rule is to establish program guidelines for a school district that elects to implement a vehicle safety inspection apprenticeship program for high school students in accordance with Title 53, Chapter 8, Part 2.

R714-159-2. Authority.

This rule is authorized by Subsection 53-8-204(5)(e).

R714-159-3. Definitions.

As used in this rule:

(1) "Apprentice" means a person meeting the qualifications described in Section II, of the Standards of Apprenticeship for Automotive Technician with the U.S. Department of Labor, who has entered into a written apprenticeship agreement providing for learning and acquiring the skills of a recognized occupation under the provisions of these standards.

(2) "Apprenticeship agreement" means the Standards of Apprenticeship for Automotive Technician as developed by the Bureau of Apprenticeship and Training, U.S. Department of Labor signed by both the apprentice and sponsor.

(3) "Certified apprentice" means a person authorized by the department to conduct safety inspections.

(4) "Closely supervise" means a sponsor will be physically present at all times on premises where safety inspections are conducted and responsible for apprentice's actions.

(5) "Inspector" means a person employed by a station licensed to conduct safety inspections.

(6) "License" means the authority given to a station by the department to conduct safety inspection.

(7) "Registration agency" means the Bureau of Apprenticeship and Training, U.S. Department of Labor.

(8) "Sponsor" means a licensed inspector who supervises and oversees a certified apprentice and has signed the apprenticeship agreement.

(9) "Station" means a business, including public garages, service stations, and repair shops licensed by the department to conduct safety inspections.

R714-159-4. Apprentice Requirements.

An applicant for certified apprentice shall:

(1) be registered as an Automotive Technician Apprentice with the Bureau of Apprenticeship and Training, U.S. Department of Labor;

(2) be a senior in high school;

(3) be at least 16 years of age;

(4) obtain training in accordance with the requirements of Section 6 of this rule;

(5) pay a \$10 non-refundable processing fee;

(6) have a valid drivers license; and

(7) only work in one sponsored station during their apprenticeship.

R714-159-5. Sponsor Requirements.

A sponsor shall:

(1) maintain records as required by the registration agency for five years;

(2) closely supervise certified apprentices;

(3) upon request, make available for inspection by the department all apprentice records.

R714-159-6. Apprentice training.

An apprentice shall obtain training through a department contracted Applied Technology Center, or through a high school that has elected to contract with the department for apprenticeship training and testing.

R714-159-7. Probationary Period.

(1) A certified apprentice will operate in a probationary period until they turn 18 years old. During this probationary period, the department, the sponsor, or apprentice may terminate the apprenticeship agreement without cause.

(2) Upon turning 18 years old, a certified apprentice may apply for an inspector certification under R714-158-5.

KEY: motor vehicles, safety inspections, apprentices 2003 53-8-204(5)(e)

Public Safety, Highway Patrol **R714-220**

Standards for Motorcycle Protective Headgear

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE No.: 26121

FILED: 03/26/2003, 12:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to establish protective headgear standards for persons under age 18 who operate or ride on a motorcycle or motor-driven cycle, i.e., electric assisted bicycle, motor assisted scooter, or personal motorized mobility device.

SUMMARY OF THE RULE OR CHANGE: The rule establishes the protective headgear standards for motorcycles in 49 CFR 571.218 (2002 edition) and for electric assisted bicycles, motor assisted scooters, and personal motorized mobility devices in 16 CFR 1203 (2002 edition). There is nothing in the old rule that is not in the new rule. The new rule contains the following information that was not in the old rule: (a) the new rule states that the word "motor-driven cycle" includes electric assisted bicycles, motor assisted scooters, and personal motorized mobility devices; (b) the new rule states that the protective headgear standards in 16 CFR 1203 (2002 edition) is the standard adopted by the commissioner for electric assisted bicycles, motor assisted scooters, and personal motorized mobility devices in Utah.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-6-107.8(3)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 49 CFR 571.218 (2002 edition); 16 CFR 1203 (2002 edition).

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule will have no impact on the state budget because it will not require the department to do anything it is not already doing.

❖ LOCAL GOVERNMENTS: This rule will have no impact on local government because local government is not involved in the protective headgear regulation process.

❖ OTHER PERSONS: The protective headgear that meets the standards set forth in 16 CFR 1203 (2002 edition) can be purchased in retail stores for approximately \$25 to \$35.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The protective headgear that meets the standards set forth in 16 CFR 1203 (2002 edition) can be purchased in retail stores for approximately \$25 to \$35.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have a slight positive affect on retail stores that sell the protective headgear that meets the standards set forth in 16 CFR 1203 (2002 edition).

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Greg Lundell at the above address, by phone at 801-284-5554, by FAX at 801-284-5544, or by Internet E-mail at glundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Robert Flowers, Commissioner

R714. Public Safety, Highway Patrol.

~~[R714-220. Standards for Motorcycle Protective Headgear.~~

~~**R714-220-1. Purpose.**~~

~~— Subsection 41-6-107.8(1) prohibits a person under age 18 from operating or riding on a motorcycle or motor-driven cycle on a highway unless the person is wearing protective headgear that complies with standards established in a rule made by the commissioner of public safety. The purpose of this rule is to establish those standards.~~

~~**R714-220-2. Authority.**~~

~~— This rule is authorized by Subsection 41-6-107.8(3)(a).~~

~~**R714-220-3. Federal Standard Adopted and Incorporated by Reference.**~~

~~— The commissioner of public safety hereby adopts the motorcycle protective headgear standards set forth in 49 CFR 571.218 (1996 edition) as the motorcycle protective headgear standards for Utah and such federal regulation is incorporated into this rule by this reference.~~

~~**KEY: motorcycles, headgear**~~

~~**May 5, 1998**~~

~~**Notice of Continuation December 17, 2002**~~

~~**41-6-107.8]**~~

R714-220. Standards for Protective Headgear.

R714-220-1. Purpose.

Section 41-6-107.8(1) prohibits a person under age 18 from operating or riding on a motorcycle or motor-driven cycle, i.e., electric assisted bicycle, motor assisted scooter, and personal motorized mobility device, on a highway unless the person is wearing protective headgear that complies with standards established in a rule made by the commissioner of public safety. The purpose of this rule is to establish those standards.

R714-220-2. Authority.

This rule is authorized by Subsection 41-6-107.8(3)(a).

R714-220-3. Motorcycle Standards.

The commissioner of public safety hereby adopts the protective headgear standards in 49 CFR 571.218 (2002 edition) as the motorcycle protective headgear standards in this state and such federal regulation is incorporated into this rule by this reference.

R714-220-4. Electric Assisted Bicycle, Motor Assisted Scooter, and Personal Motorized Mobility Device Standards.

The commissioner of public safety hereby adopts the protective headgear standards in 16 CFR 1203 (2002 edition) as the electric assisted bicycle, motor assisted scooter, and personal motorized mobility device standards in this state and such federal regulation is incorporated into this rule by this reference. The standards in 16 CFR 1203 (2002 edition) meet the standards of the Snell Memorial Foundation's Standards for Protective Headgear for use in bicycling as required by Section 41-6-107.8(3)(b).

KEY: headgear, motorcycles, bicycles

2003

Notice of Continuation December 17, 2002

41-6-107.8(3)(a)

▼ ————— ▼

Workforce Services, Workforce
Information and Payment Services
R994-303-104
Qualified Employer

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26135

FILED: 04/01/2003, 16:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is needed to bring the rule into compliance with statutory changes made by Senate Bill 15 during the 2003 Legislative session. (DAR NOTE: S.B. 15 is found at UT L 2003 Ch 17, and is effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Previously on those employers who paid wages of \$140 per quarter or more were subject to the Employment Security Act. Under the amendment in Senate Bill 15 all employers who pay wages are subject to the Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-303

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no costs or savings to the State budget because unemployment is a federally funded program. The State's unemployment liability will remain unchanged.
- ❖ LOCAL GOVERNMENTS: There are no costs or savings to local governments because this is a federally funded program. Local government's unemployment liability will remain the same.
- ❖ OTHER PERSONS: There are no costs or savings to any person as a result of this change. The change is being made to comply with State law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this bill.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that there will be any fiscal impact on any business by this rule as there are no businesses currently paying less than \$140 per quarter in wages. Additionally, since this rule change is only being made to reflect the change made in statute, it is assumed that any costs which might be associated with this change were contemplated in the statutory change which is identical.

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@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/15/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 05/16/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-303. Contribution Rates and Relief of Charges.

R994-303-104. Qualified Employer.

[After January 1, 1985, a] A "qualified employer" is [~~one who was~~] an employer that paid wages during all four quarters of the fiscal year immediately preceding the computation date. Generally "employer" means any employing unit [~~which~~]that paid wages [~~of \$140 or more~~]during a calendar quarter. [~~"Employer" is defined in detail in Section 35A-4-203 of the Act.~~] An employer [~~employing unit which pays wages of \$140 or more during the quarter~~] becomes subject to the Act on the first day of [~~that~~]the quarter in which the employer paid wages. [~~After payment of the first \$140, the employing unit is subject to the Act regardless of the wages paid in subsequent quarters.~~] Coverage will be terminated [~~upon written request from the employing unit when it pays LESS THAN \$140 in each of the four calendar quarters of a calendar year. Termination is automatic only~~] if there is no payroll in each of the four calendar quarters of a calendar year.

KEY: unemployment compensation, rates
[June 17, 1996]
Notice of Continuation May 23, 2002
35A-4-303



End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Administrative Services, Facilities
Construction and Management
R23-13
State of Utah Parking Rules for
Facilities Managed by the Division of
Facilities Construction and
Management

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26117
FILED: 03/25/2003, 15:20

**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: Subsection 63A-5-204 authorizes the executive director of the Department of Administrative Services to adopt rules governing traffic flow and vehicle parking on state grounds surrounding facilities managed by the Division of Facilities Construction and Management (DFCM), and under Subsection 53-1-109, authorizing DFCM to enforce traffic rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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: Managing parking is an integral part of the management of buildings under DFCM. This rule clarifies DFCM's authority in this regard, and allows DFCM to successfully manage this responsibility. DFCM has not received any opposition to this rule. Review by DFCM recommends continuation of this rule.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth Nye or Priscilla Anderson at the above address, by phone at 801-538-3284 or 801-538-9595, by FAX at 801-538-3267 or 801-538-3378, or by Internet E-mail at knye@utah.gov or phanderson@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 03/25/2003

▼ ————— ▼
Regents (Board Of), Administration
R765-660
Utah State Student Incentive Grant
Program

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26134
FILED: 04/01/2003, 12:09

**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: This rule provides for the State Student Incentive Grant Program and incorporates by reference Federal statutes and regulations governing this program which awards grants to eligible students attending public or private non-profit institutions of higher education or public postsecondary vocational institutions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Office of the Commissioner and State Board of Regents continue to support these grants for eligible students under Federal guidelines governing this program. No comments have been voiced in opposition to this rule, and the rule should be continued.

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

ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Don A. Carpenter at the above address, by phone at 801-321-7110, by FAX at 801-321-7199, or by Internet E-mail at dcarpenter@utahsbr.edu

AUTHORIZED BY: Cecelia H. Foxley, Commissioner

EFFECTIVE: 04/01/2003



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

No. 25670 (NEW): R590-218. Permitted Language for Reservation of Discretion Clauses.
Published: December 15, 2002
Effective: March 21, 2003

Administrative Services

Facilities Construction and Management

No. 25989 (AMD): R23-3. Planning and Programming for Capital Projects.
Published: February 15, 2003
Effective: March 24, 2003

No. 25988 (R&R): R23-9. Building Board State/Local Cooperation Policy.
Published: February 15, 2003
Effective: March 24, 2003

Commerce

Occupational and Professional Licensing

No. 25987 (AMD): R156-46a. Hearing Instrument Specialist Licensing Act Rules.
Published: February 15, 2003
Effective: March 18, 2003

Corrections

Administration

No. 25991 (AMD): R251-110. Sex Offender Notification.
Published: February 15, 2003
Effective: March 21, 2003

Human Services

Recovery Services

No. 25977 (AMD): R527-3. Definitions.
Published: February 15, 2003
Effective: March 19, 2003

Insurance

Administration

DAR NOTE: The effective date filed for the amendment of Rule R590-199 (DAR No. 25923) that was published in the April 1, 2003, *Bulletin*, was inadvertently filed in error as that filing had been withdrawn. The effective date was actually for the CPR on Rule R590-199 (DAR No. 25628). The notice should have been:

No. 25628 (CPR): R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.
Published: February 1, 2003
Effective: March 14, 2003

Natural Resources

Parks and Recreation

No. 26026 (AMD): R651-408. Off-Highway Vehicle Education Curriculum Standards.
Published: March 1, 2003
Effective: April 1, 2003

No. 26028 (NEW): R651-410. Off-Highway Vehicle Safety Equipment.
Published: March 1, 2003
Effective: April 1, 2003

No. 26029 (AMD): R651-602. Aircraft and Powerless Flight.
Published: March 1, 2003
Effective: April 1, 2003

No. 25837 (AMD): R651-611. Fee Schedule.
Published: January 15, 2003
Effective: March 31, 2003

Public Safety

Fire Marshal

No. 26006 (AMD): R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
Published: February 15, 2003
Effective: March 18, 2003

No. 26001 (AMD): R710-7. Concerns Servicing Automatic Fire Suppression Systems.
Published: February 15, 2003
Effective: March 18, 2003

No. 26003 (AMD): R710-9. Rules Pursuant to the Utah Fire Prevention Law.
Published: February 15, 2003
Effective: March 18, 2003

Regents (Board Of)

Administration

No. 25704 (REP): R765-171. Postsecondary Proprietary School Act Rules.
Published: December 15, 2002
Effective: March 31, 2003

Workforce Services

Employment Development

No. 26042 (AMD): R986-700-703. Client Rights and Responsibilities.

Published: March 1, 2003

Effective: April 1, 2003

No. 26043 (AMD): R986-700-709. Employment Support (ES) CC.

Published: March 1, 2003

Effective: April 1, 2003

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2003, including notices of effective date received through April 1, 2003, the effective dates of which are no later than April 15, 2003. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25964	5YR	01/15/2003	2003-3/62
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25783	AMD	02/04/2003	2003-1/3
R23-5	Contingency Funds	25955	5YR	01/15/2003	2003-3/62
R23-6	Value Engineering and Life Cycle Costing of State-Owned Facilities Rules and Regulations	25956	5YR	01/15/2003	2003-3/63
R23-7	Utah State Building Board Policy Statement Master Planning	25770	REP	02/04/2003	2003-1/5

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R23-9	Building Board State/Local Cooperation Policy	25957	5YR	01/15/2003	2003-3/63
R23-9	Building Board State/Local Cooperation Policy	25988	R&R	03/24/2003	2003-4/5
R23-10	Naming of State Buildings	25962	5YR	01/15/2003	2003-3/64
R23-10	Naming of State Buildings	25784	AMD	02/04/2003	2003-1/5
R23-11	Facilities Allocation and Sale Procedures	25771	REP	02/04/2003	2003-1/7
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	26117	5YR	03/25/2003	2003-8/43
R23-21	Division of Facilities Construction and Management Lease Procedures	25959	5YR	01/15/2003	2003-3/64
R23-24	Capital Projects Utilizing Non-appropriated Funds	25960	5YR	01/15/2003	2003-3/65
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R81-5-5	Advertising	25887	AMD	02/26/2003	2003-2/8
R81-7-3	Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events	25650	AMD	01/24/2003	2002-24/6
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R151-14	New Automobile Franchise Act Rules	25624	AMD	01/02/2003	2002-23/6
R151-33	Pete Suazo Utah Athletic Commission Act Rule	25649	AMD	01/15/2003	2002-24/7
R151-35	Powersport Vehicle Franchise Act Rule	25724	NEW	01/15/2003	2002-24/9
R151-46b	Department of Commerce Administrative Procedures Act Rules	25822	AMD	02/18/2003	2003-1/8
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R154-10	Utah Digital Signatures Rules	25553	AMD	03/14/2003	2002-22/9
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R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25922	5YR	01/13/2003	2003-3/65
R156-46a	Hearing Instrument Specialist Licensing Act Rules	25987	AMD	03/18/2003	2003-4/7
R156-47b-302a	Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training	25651	AMD	01/16/2003	2002-24/10
R156-59	Professional Employer Organization Act Rules	25920	5YR	01/09/2003	2003-3/66
R156-60a	Social Worker Licensing Act Rules	25629	AMD	01/02/2003	2002-23/8
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R162-107	Unprofessional Conduct	25981	5YR	01/21/2003	2003-4/52
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<u>Community Development, History</u>					
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R212-4	Archaeological Permits	25787	AMD	03/11/2003	2003-1/13

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R251-304	Contract Procedures	26053	5YR	02/21/2003	2003-6/17
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R277-483	Persistently Dangerous Schools	25965	NEW	03/07/2003	2003-3/5
R277-485	Loss of Enrollment	25966	NEW	03/07/2003	2003-3/7
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R277-518	Vocational-Technical Certificates	25926	5YR	01/14/2003	2003-3/67
R277-600	Student Transportation Standards and Procedures	25928	5YR	01/14/2003	2003-3/68
R277-605	Coaching Standards and Athletic Clinics	25931	5YR	01/14/2003	2003-3/68
R277-610	Released-Time Classes for Religious Instruction	25932	5YR	01/14/2003	2003-3/68
R277-611	Medical Recommendations by School Personnel to Parents	25647	NEW	01/03/2003	2002-23/12
R277-615	Foreign Exchange Students	25933	5YR	01/14/2003	2003-3/69
R277-700	The Elementary and Secondary School Core Curriculum	25935	5YR	01/14/2003	2003-3/69
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R277-705	Secondary School Completion and Diplomas	25648	AMD	01/03/2003	2002-23/13
R277-709	Education Programs Serving Youth in Custody	25937	5YR	01/14/2003	2003-3/70
R277-718	Utah Career Teaching Scholarship Program	25938	5YR	01/14/2003	2003-3/71
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	25929	5YR	01/14/2003	2003-3/71
R277-722	Withholding Payments and Commodities in the CACFP	25930	5YR	01/14/2003	2003-3/72
R277-730	Alternative High School Curriculum	25939	5YR	01/14/2003	2003-3/72
R277-746	Driver Education Programs for Utah Schools	26089	5YR	03/12/2003	2003-7/73
R277-747	Private School Student Driver Education	26090	5YR	03/12/2003	2003-7/73
R277-751	Special Education Extended School Year	26091	5YR	03/12/2003	2003-7/74
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R313-15	Standards for Protection Against Radiation	25943	5YR	01/14/2003	2003-3/73
R313-28	Use of X-Rays in the Healing Arts	25786	AMD	03/14/2003	2003-1/27
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R315-15	Standards for the Management of Used Oil	26064	5YR	03/03/2003	2003-7/75
R315-301	Solid Waste Authority, Definitions, and General Requirements	26092	5YR	03/14/2003	2003-7/75
R315-302	Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements	26093	5YR	03/14/2003	2003-7/76
R315-303	Landfilling Standards	26094	5YR	03/14/2003	2003-7/77
R315-305	Class IV and VI Landfill Requirements	26095	5YR	03/14/2003	2003-7/78
R315-306	Energy Recovery and Incinerator Standards	26096	5YR	03/14/2003	2003-7/79
R315-307	Landtreatment Disposal Standards	26097	5YR	03/14/2003	2003-7/79
R315-308	Ground Water Monitoring Requirements	26098	5YR	03/14/2003	2003-7/80
R315-309	Financial Assurance	26100	5YR	03/14/2003	2003-7/81
R315-310	Permit Requirements for Solid Waste Facilities	26099	5YR	03/14/2003	2003-7/82
R315-311	Permit Approval for Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities	26101	5YR	03/14/2003	2003-7/82
R315-312	Recycling and Composting Facility Standards	26102	5YR	03/14/2003	2003-7/83
R315-313	Transfer Stations and Drop Box Facilities	26103	5YR	03/14/2003	2003-7/84
R315-314	Facility Standards for Piles Used for Storage and Treatment	26104	5YR	03/14/2003	2003-7/84
R315-315	Special Waste Requirements	26105	5YR	03/14/2003	2003-7/85
R315-316	Infectious Waste Requirements	26106	5YR	03/14/2003	2003-7/86
R315-317	Other Processes, Variances, and Violations	26107	5YR	03/14/2003	2003-7/87
R315-318	Permit by Rule	26108	5YR	03/14/2003	2003-7/87
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R317-4-3	Onsite Wastewater Systems General Requirements	25203	AMD	01/10/2003	2002-18/43
R317-4-3	Onsite Wastewater Systems General Requirements	25635	AMD	01/30/2003	2002-23/21
R317-6-6	Implementation	25632	AMD	01/30/2003	2002-23/25
R317-7-13	Public Participation	25631	AMD	01/30/2003	2002-23/32
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	25634	AMD	01/30/2003	2002-23/33
R317-9	Administrative Procedures	25633	NEW	02/05/2003	2002-23/74
R317-10	Certification of Wastewater Works Operators.	25638	AMD	01/30/2003	2002-23/78
R317-11	Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems	25637	AMD	01/30/2003	2002-23/80
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R414-5	Reduction in Hospital Payments	25948	EMR	01/15/2003	2003-3/52
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R414-13	Psychology Services (5YR EXTENSION)	25192	NSC	01/03/2003	Not Printed
R414-21	Physical Therapy	25968	EMR	01/15/2003	2003-3/54
R414-27	Medicare Nursing Home Certification	25982	5YR	01/21/2003	2003-4/52
R414-52	Optometry Services	25970	EMR	01/15/2003	2003-3/57
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R414-60	Medicaid Policy for Pharmacy Copayment Procedures	26011	EMR	02/01/2003	2003-4/50
R414-301	Medicaid General Provisions	26004	5YR	01/31/2003	2003-4/53
R414-302	Eligibility Requirements	26005	5YR	01/31/2003	2003-4/53
R414-303	Coverage Groups	26012	5YR	01/31/2003	2003-4/54
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R414-306	Program Benefits	26019	5YR	01/31/2003	2003-4/56
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R414-308	Record Management	26021	5YR	01/31/2003	2003-4/57
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R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	26080	5YR	03/10/2003	2003-7/88
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R430-6	Criminal Background Screening	25865	AMD	03/13/2003	2003-2/25
R430-100	Child Care Center	25944	5YR	01/15/2003	2003-3/75
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R432-3	General Health Care Facility Rules Inspection and Enforcement	25868	AMD	03/13/2003	2003-2/29
R432-5	Nursing Facility Construction	25452	AMD	01/15/2003	2002-21/92
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R432-35	Background Screening	25866	AMD	03/13/2003	2003-2/30
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R501-11	Social Detoxification Programs	25660	AMD	01/30/2003	2002-24/25
R501-12	Child Foster Care	25644	AMD	01/30/2003	2002-23/82
R501-16	Intermediate Secure Treatment Programs for Minors (5YR EXTENSION)	25703	NSC	02/26/2003	Not Printed

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R501-17	Adult Foster Care	26084	5YR	03/11/2003	2003-7/89
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R527-39	Applicant/Recipient Cooperation	25979	5YR	01/17/2003	2003-4/57
R527-56	In-Kind Support	26075	5YR	03/10/2003	2003-7/90
R527-201	Medical Support Services	25869	AMD	03/05/2003	2003-2/34
R527-305	High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases	26076	5YR	03/10/2003	2003-7/91
R527-430	Administrative Notice of Lien-Levy Procedures	25980	5YR	01/21/2003	2003-4/57
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<u>Administration</u>					
R590-76	Health Maintenance Organization and Limited Health Plans	25870	AMD	02/26/2003	2003-2/35
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R590-157	Taxation of Surplus Lines Premiums	26033	5YR	02/10/2003	2003-5/39
R590-160	Administrative Proceedings	25643	AMD	01/09/2003	2002-23/86
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R590-183	Title Plant Rule (EXPIRED RULE)	25908	NSC	01/02/2003	Not Printed
R590-199	Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans	25628	CPR	03/14/2003	2003-3/50
R590-199	Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans	25628	AMD	03/14/2003	2002-23/92
R590-215	Permissible Arbitration Provisions for Individual and Group Health Insurance	25093	CPR	01/09/2003	2002-23/100
R590-215	Permissible Arbitration Provisions for Individual and Group Health Insurance	25093	NEW	01/09/2003	2002-15/65
R590-218	Permitted Language for Reservation of Discretion Clauses	25670	NEW	03/21/2003	2002-24/28
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R634-1	Americans With Disabilities Complaint Procedure	25951	AMD	03/04/2003	2003-3/27
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R651-410	Off-Highway Vehicle Safety Equipment	26028	NEW	04/01/2003	2003-5/8
R651-602	Aircraft and Powerless Flight	26029	AMD	04/01/2003	2003-5/9
R651-611	Fee Schedule	25837	AMD	03/31/2003	2003-2/38

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R657-5	Taking Big Game	25720	AMD	01/15/2003	2002-24/29
R657-17	Lifetime Hunting and Fishing License	25721	AMD	01/15/2003	2002-24/46
R657-23	Process for Providing Proof of Completion of Hunter Education	25890	AMD	02/16/2003	2003-2/41
R657-33	Taking Bear	25892	AMD	02/16/2003	2003-2/43
R657-38	Dedicated Hunter Program	25722	AMD	01/15/2003	2002-24/48
R657-42	Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	25723	AMD	01/15/2003	2002-24/52
R657-44	Big Game Depredation	25894	R&R	02/16/2003	2003-2/46
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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired

NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review *Bulletin*

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