

UTAH STATE BULLETIN

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

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, 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/>

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Division of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

Notice of Rule Number Change for R398-10 (DAR No. 26348), Published in the July 1, 2003, Bulletin

On June 9, 2003, the Department of Health filed a notice of proposed new rule for Rule R398-10. While the rule analysis indicated that the new rule number should be R398-10, the text of the rule itself indicated that the rule number should be R398-20. When the rule was codified, it was codified as R398-20.

From the time the rule was made effective until the time it was codified (August 6 through November 19, 2003), this rule appeared in the indexes and the register of filings maintained by the Division of Administrative rules as R398-10. Corrections have been made to both the indexes and registers, where the rule now appears as R398-20.

Questions regarding the numbering issue for Rule R398-20 should be addressed to Mike Broschinsky, Administrative Code Editor, Division of Administrative Rules, at (801) 538-3003, or by E-mail at mbroschi@utah.gov.

End of the Editor's Notes Section

SPECIAL NOTICES

Alcoholic Beverage Control Administration

Alcoholic Beverage Control Commission 2004 Meeting Schedule

Public Notice is hereby given of the 2004 calendar year meeting schedule for the Utah Alcoholic Beverage Control Commission. The Commission meets monthly at the department's administrative office at 1625 South 900 West in Salt Lake City, Utah. Meetings are generally scheduled for the fourth Friday of the month, January through October; and for the third Friday in November and December. Meetings usually begin at 9:00 a.m. and are open to the public. Meeting dates and times are subject to change, but are generally known within two weeks of the meeting..

To confirm meeting dates and times, contact: Sharon Mackay at (801) 977-6801.

Commerce Administration

Public Hearing on Proposed Fees for Services Provided and Costs Incurred by the Department of Commerce During Fiscal Year 2005

The Department of Commerce will hold a hearing on Friday, January 16, 2004, at 9:00 a.m. at the Heber M. Wells Building, 160 East 300 South, Room 205, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on proposed fees which could to be assessed for services provided and costs which would be incurred by the Department during Fiscal Year 2005. Subsection 63-38-3.2(2)(b) of the Budgetary Procedures Act provides that an agency shall conduct a public hearing on any proposed regulatory fee.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Many existing fees are unchanged in the proposed fee schedule which has been prepared for consideration by the Legislature during its 2004 General Session. Copies of those schedules will be distributed at the January 16, 2004, hearing.

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

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 December 2, 2003, 12:00 a.m., and December 15, 2003, 11:59 p.m. are included in this, the January 1, 2004, 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 February 2, 2004. 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 April 30, 2004, 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, Fleet
Operations, Surplus Property
R28-3**

**Utah State Agency for Surplus Property
Adjudicative Proceedings**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26843

FILED: 12/09/2003, 12:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adds a reference to Section 63-46b-1, et seq. It clarifies that, unless required by statute, the Director of the Division of Fleet Operations or his designee has the discretion to grant a hearing on matters over which the Utah State Agency for Surplus Property (USASP) has jurisdiction and are subject to Title 63, Chapter 46b. Furthermore, the amendment clarifies that the Director of the Division of Fleet Operations or his designees have the authority to preside over such matters.

SUMMARY OF THE RULE OR CHANGE: This change adds "and Section 63-46b-1, et. seq." to Section R28-3-1. It deletes "USASP" in the second sentence of Section R28-3-3 and adds "Division of Fleet Operations." It deletes the second "USASP" in the first sentence of Subsection R28-3-4(2) and adds "of the Division of Fleet Operations or his designee." It deletes "USASP" in Subsection R28-3-4(8) and adds "of the division of Fleet Operations or his designee." It deletes "USASP director's" in Subsection R28-3-4(9) and adds "rendered by the Director of Fleet Operations or his designee."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-46b-1 et seq. and 63A-9-801

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Anticipated costs or savings to the state budget, if any are unknown. The amendment merely clarifies that the director of the Division of Fleet Operations or his designee is authorized to be the presiding officer over disputes that are subject to Title 63, Chapter 64b and matters over which, the Utah State Agency for Surplus Property has jurisdiction. It is believed that costs or savings to the state budget will be contingent on the number of cases filed by state agencies and heard by the director of the Division of Fleet Operations or his designee, if any.

❖ **LOCAL GOVERNMENTS:** Anticipated costs or savings to local governments are unknown. The USASP conducts business with local governments. The costs or savings to local governments resulting from the amendment will, as above, be contingent on the number of cases filed and heard, if any.

❖ **OTHER PERSONS:** Anticipated costs or savings to other persons are unknown. The USASP deals conducts business with non-governmental entities. The costs or savings to these persons resulting from the amendment will, as above, be contingent on the number of cases filed and heard, if any.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons are unknown. Costs associated with filing a request for hearing should be the same regardless who is designated the presiding officer under the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment's fiscal impact on businesses is unknown. Costs associated with filing a request for hearing should be the same regardless who is designated the presiding officer under the rule. Fiscal impact on particular businesses should be contingent on the number of cases filed and heard, if any. With regard to the cases heard, the informal nature of the hearing should make the entire process less costly than going to court if the decision rendered is accepted by all parties.

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS, SURPLUS PROPERTY
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sal Petilos at the above address, by phone at 801-538-3091, by FAX at 801-538-3844, or by Internet E-mail at spetilos@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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Steve Saltzgeber, Director

R28. Administrative Services, Fleet Operations, Surplus Property, R28-3. Utah State Agency for Surplus Property Adjudicative Proceedings.

R28-3-1. Purpose.

As required by the Utah Administrative Procedures Act, this rule provides the procedures for adjudicating disputes brought before the Utah State Agency for Surplus Property under the authority granted by Section[s] 63A-9-801 and Section 63-46b-1, et seq.

R28-3-2. Definitions.

Terms used are as defined in Section 63-46b-2, except "USASP" means the Utah State Agency for Surplus Property, and "superior agency" means the Department of Administrative Services.

R28-3-3. Proceedings to be Informal.

All matters over which the USASP has jurisdiction including bid validity determination and sales issues, which are subject to Title 63, Chapter 46b, will be informal in nature for purposes of adjudication. The Director of the [USASP]Division of Fleet Operations or his designee will be the presiding officer.

R28-3-4. Procedures Governing Informal Adjudicatory Proceedings.

1. No response need be filed to the notice of agency action or request for agency action.
2. The USASP may hold a hearing at the discretion of the [USASP]director of the Division of Fleet Operations or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.
3. Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.
4. A hearing will be held only after timely notice of the hearing has been given.
5. No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.
6. No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.
7. Any hearing held under this rule is open to all parties.
8. Within thirty days after the close of any hearing, the [USASP]director of the Division of Fleet Operations or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.
9. The [USASP director's]decision rendered by the Director of the Division of Fleet Operations or his designee shall be based on the facts in the USASP file and if a hearing is held, the facts based on evidence presented at the hearing.
10. The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.
11. Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order of the superior agency, and then may be appealed to the appropriate district court.

KEY: surplus property, appellate procedures
~~1988~~2004
 Notice of Continuation November 17, 1998
 63A-9-801
 63-46b



**Commerce, Occupational and
 Professional Licensing**
R156-38
**Residence Lien Restriction and Lien
 Recovery Fund Rules**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 26834
 FILED: 12/04/2003, 11:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: At the request of claimants to the Fund, the Division is proposing

amendments which will codify existing Division practices with respect to claim processing deadlines.

SUMMARY OF THE RULE OR CHANGE: Section R156-38-105 is divided into two sections, Section R156-38-105a, which remains Adjudicative Proceedings, and Section R156-38-105b, which is now entitled Notices of Denial - Notice of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status. Additions are made to the new Section R156-38-105b which set out specific time frames for responding to Notices of Incomplete Application, for extensions of time to respond to Notices, and for having claims placed on prolonged status.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 38-11-101 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, approximately \$50, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ❖ LOCAL GOVERNMENTS: These proposed rule amendments do not apply to local governments. Therefore, there is no anticipated cost or savings for local governments.
- ❖ OTHER PERSONS: The Division does not anticipate any costs or savings involved with the proposed amendments as the amendments are only codifying the Division's existing practice regarding claim processing deadlines.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any costs or savings involved with the proposed amendments as the amendments are only codifying the Division's existing practice regarding claim processing deadlines.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change codifies existing standards and procedures regarding incomplete applications, extensions to complete applications and requests for prolonged status. There appears to be no fiscal impact to businesses as a result of this rule filing. Klare Bachman, 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:

Earl Webster at the above address, by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at ewebster@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 02/02/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/14/2004 at 8:00 AM, 160 East 300 South - Room 426 (4th Floor) - Salt Lake City, Utah.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.**

R156-38-105a. Adjudicative Proceedings.

(1) The classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim against the fund within 30 days of notification by the division of the filing of the claim, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim.

(8)(a) For informal claims, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For formal claims, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

R156-38-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of claim shall be provided to a claimant who submits a complete application if the division determines that the claim does not meet the requirements for payment.

(b) A written notice of incomplete application and conditional denial of claim shall be provided to a claimant who submits an incomplete application. The notice shall advise the claimant that the application is incomplete and that the application is denied, unless the claimant corrects the deficiencies within the time period specified in the notice and the claim otherwise meets all qualification for payment.

(2) A claimant may receive a single 30 day extension of the time period in Subsection (1)(b). Additional extensions of the time period shall only be granted if the claimant makes the request in writing and demonstrates, with adequate documentation, that the claimant:

(a) has made all reasonable efforts to complete the claim;

(b) has been prevented from completing the claim because of unusual and extraordinary circumstances entirely beyond its control; and

(c) can be reasonably expected to complete the claim if an additional extension is granted.

(3)(a) A claimant may for any reason be granted a single request that its claim be prolonged.

(b) A claim granted prolonged status shall be inactive for a period of one year or until reactivated by the claimant, whichever comes first.

(c) At the end of the one year period, the claimant shall be required to either complete the claim or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation pursuant to Subsection R156-38-105a(9);

(ii) ongoing bankruptcy proceedings involving the nonpaying party that would prevent the claimant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(d) Upon expiration of the one year prolonged status of a claim, the Division shall issue to the claimant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the claimant an opportunity to:

(i) reactivate the claim by submitting documentation necessary to complete the claim;

(ii) withdraw the claim; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(c).

(e) Any request for renewal of prolonged status made under Subsection (3)(c)(iv) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(f) If a claimant's request for renewal of prolonged status is denied, the claimant may request agency review.

(g) A claim which has been reactivated from prolonged status may not be again prolonged unless the claimant can establish compliance with the requirements of Subsection (3)(c).

KEY: licensing, contractors, liens

[~~June 17, 2003~~2004]

Notice of Continuation April 6, 2000

38-11-101

58-1-106(1)(a)

58-1-202(1)(a)



Commerce, Real Estate **R162-3** License Status Changes

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26838

FILED: 12/05/2003, 10:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It is necessary to amend the rule to comply with statutory changes in continuing education and license activation requirements that were made by 2003 Senate Bill 198. The Division also needs to amend the rule so that its language will not preclude on-line license renewal when the technology to do on-line renewal is available to the Division. (DAR NOTE: S.B. 198 is found at UT L 2003 Ch 264, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: The continuing education requirements for activation of licenses and the requirements for reinstatement of expired licenses are conformed to the changes in the statute by S.B. 198, and the types of continuing education courses that will be acceptable for these purposes are specified. Requirements that renewal forms and other documents be mailed to the Division have been eliminated. Provisions allowing licensees to certify that they have completed the required continuing education courses instead of mailing course certificates have been added to facilitate the on-line renewal process.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** No cost or savings is anticipated. The changes in continuing education hours for real estate licensees do not affect State government and therefore no

cost or savings is anticipated as a result of those changes. Allowing licensees to renew on-line in the future may save the Division staff costs in an unknown amount, but it is anticipated that any savings in the cost of licensing staff would be offset by increased investigative costs to spot-check whether or not the on-line certifications that continuing education has been completed have been truthful.

❖ **LOCAL GOVERNMENTS:** The rules for continuing education and license renewal for real estate agents and brokers do not involve local government, and therefore no cost or savings is anticipated.

❖ **OTHER PERSONS:** Any cost or savings to other persons because of the changes in continuing education requirements made by S.B. 198 are attributable to S.B. 198 itself and not to the provisions in these rules implementing the changes made by S.B. 198. As to on-line renewals, they will of necessity involve payment of renewal fees by credit card, which will result in credit card costs to the Division that will be passed on to licensees in the form of slightly higher renewal fees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As explained in "Other persons" above, on-line renewal will result in slightly higher renewal fees charged to licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing contains a provision regarding on-line license renewals. Although on-line renewals may result in some convenience fees or slightly increased licensing fees, the convenience associated with this method will likely outweigh the increased fees. Therefore, the fiscal impact to businesses is anticipated to be a positive one.

As to the continuing education provisions in this rule filing, the fiscal impact to businesses with respect to continuing education for real estate agents and brokers has already been addressed in the passage of S.B. 198 during the 2003 Legislative Session.

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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.**R162-3. License Status Change.****R162-3-1. Status Changes.**

3.1. A licensee must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate non-refundable fees are received by the Division. Notice must be on the forms required by the Division.

3.1.1. Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

3.1.2. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

3.1.3. Change of name of a brokerage must be accompanied by evidence that the new name has been approved by the Division of Corporations, Department of Commerce.

3.1.4. Change of Principal Broker of a real estate brokerage which is a sole proprietorship, requires closure of the registered entity. The new principal broker will activate the Registered Company and provide proof from the Division of Corporations of the authorization to use the DBA. Change cards will be required for the terminating Principal Broker, new Principal Broker and all licensees affiliated with the brokerage.

3.1.5. Change of a Principal Broker within an entity which is not a sole proprietorship requires written notice from the entity signed by both the terminating Principal Broker and the new Principal Broker.

R162-3-2. Unavailability of Licensee.

3.2. If a licensee is not available to properly execute the form required for a status change, the status change may still be made provided a letter advising of the change is mailed by certified mail to the last known address of the unavailable licensee. A verified copy of the letter and proof of mailing by certified mail must be attached to the form when it is submitted to the Division.

R162-3-3. Transfers.

3.3. Prior to transferring from one principal broker to another principal broker, the licensee must mail or deliver to the Division written notice of the change on the form required by the Division.

R162-3-4. Inactivation.

3.4. To voluntarily inactivate a license, the licensee must deliver or mail to the Division a written request for the change signed by both the licensee and principal broker.

3.4.1. Prior to placing his license on an inactive status, a principal broker must provide written notice to each licensee affiliated with him of that licensing status change. Evidence of that written notice must be provided to the Division in order to process the status change. The inactivation of the license of a principal broker will also cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2. The non-renewal, suspension, or revocation of the license of a principal broker will cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2.1. When a principal broker is notified that his license will be suspended or revoked, he must, prior to the effective date of the suspension or revocation, provide written notice to each licensee affiliated with him of that status change. In addition, the Division shall send written notice to each sales agent, associate broker, or branch broker of the effective date of inactivation and the process for transfer.

3.4.3. The principal broker may involuntarily inactivate the license of the sales agent or associate broker by complying with R162-3.2.

R162-3-5. Activation.

3.5. All licensees changing to active status must submit to the Division the applicable non-refundable activation fee, ~~and a~~ ~~written~~ request for activation ~~on~~ in the form required by the Division, and, if the license has been on inactive status for more than 12 consecutive months, proof of completion of the examination or the 12-hour continuing education requirement set forth in Section 61-2-9(3). ~~[If the license has been on an "inactive" status in excess of one year, the licensee must provide to the Division a certificate evidencing completion of the education or examination requirements set forth in Section 61-2-9. At the time of the licensee's next renewal, education which was used to activate the license may not be used again for continuing education purposes.]~~

3.5.1 Continuing Education for Activation. Courses that have been approved by the Division for continuing education purposes in the following topics will be acceptable toward the continuing education required for activation: agency, contract law, the Real Estate Purchase Contract and other state-approved forms, ethics, Utah law, and closing/settlement.

3.5.1.1 To qualify as continuing education for activation, all courses submitted must have been completed within one year before activation.

3.5.1.2 Continuing education that was submitted to activate a license may not be used again toward the continuing education required on the licensee's next renewal.

R162-3-6. Renewal and Reinstatement.

3.6.1 A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on the division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees ~~[return the completed renewal notice, proof of completion of 12 hours of continuing education and the applicable non-refundable renewal fee to the Division]~~ on or before the expiration shown on the notice. Renewal of an active Principal Broker license requires certification in the form required by the division that the business name under which the licensee is operating is still current and in good standing with the Division of Corporations and that all real estate trust accounts are current.

3.6.1.1 Continuing education requirement. All licenses who are applying to renew their licenses in an active status are required to have completed 12 hours of approved continuing education prior to applying to renew.

3.6.1.2 Applications filed by mail. The division will consider a properly completed application that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.

3.6.1.3 Documentation of continuing education. Any licensee who renews on-line on the division's web site and certifies that the

required continuing education has been completed shall maintain the original course completion certificates supporting that certification for three years following renewal. The licensee shall produce those certificates for audit upon request by the division.

3.6.1.4 Misrepresentation on application. Any misrepresentation in an application for renewal will be considered a separate violation of these rules and separate grounds for disciplinary action against the licensee, regardless of whether the application is filed with the division by mail or in person, or made on-line.~~[3.6.1. If the renewal fee and documentation are not received within the prescribed time period, the license shall expire.]~~

3.6.2. A license expires if it is not renewed on or before its expiration date. When an active license expires, the licensee's affiliation with a principal brokerage automatically terminates.

3.6.3 The license may be renewed for a period of thirty days after the expiration date by meeting all of the conditions for renewal and, in addition, paying a non-refundable late fee, and, if the licensee will be actively licensed, submitting the forms required by the Division to activate a license~~[upon payment of a non-refundable late fee in addition to the requirements of R162-3.5 and R162-3.6].~~

3.6.[3]4. After this 30-day period and until six months after the expiration date the license may be reinstated by meeting all of the conditions for renewal and, in addition, paying a non-refundable late fee and a non-refundable reinstatement fee, submitting proof of the 12 hours of continuing education required by Section 61-2-9(2)(a) and the 12 additional hours of continuing education required by Section 61-2-9(2)(c)(iii), and, if the licensee will be actively licensed, submitting the forms required by the Division to activate a license~~[paying a non-refundable reinstatement fee, and providing proof of satisfactory completion of the Utah portion of the prelicensing education required under Section 61-2-6 or passing the Utah portion of the real estate examination, in addition to the requirements of R162-3.5 and R162-3.6.]~~

3.6.4.1 Additional Continuing Education Hours for Reinstatement. Courses that have been approved by the Division for continuing education purposes in the following topics will be acceptable toward the additional 12 hours of continuing education required for reinstatement by Section 61-2-9(2)(c)(iii): agency, contract law, the Real Estate Purchase Contract and other state-approved forms, ethics, Utah law, and closing/settlement.

3.6.4.1.1 To qualify as continuing education for reinstatement, all courses submitted must have been completed within one year before activation.

3.6.4.1.2 Continuing education that was submitted to reinstate a license may not be used again toward the continuing education required on the licensee's next renewal.

3.6.[4]5. If the licenses of licensees affiliated with a principal broker are inactivated because of the[A] principal broker's failure to renew his license when due, [which causes the licenses of those affiliated with him to be placed on an inactive status,]the failure to renew the license in a timely manner shall be separate grounds for disciplinary action against the principal broker.

3.6.[5]6. If the Division has received a licensee's application for renewal [documents]in a timely manner but the information is incomplete, the division may grant the licensee [shall be extended]a 15-day grace period to complete the application, during which time the division shall extend the license.

3.6.[6]7. Education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes in another state. These courses shall meet the Utah requirement of protection of the public, except that credit will

not be given for education where the subject matter pertains to another state's license laws.

3.6.[6]7.1. Prior approval must be obtained from the division before credit will be granted. Evidence must be provided to the Division that the course was certified by another licensing jurisdiction at the time the course was taken.

KEY: real estate business

[April 23, 1998]2004

Notice of Continuation June 3, 2002

61-2-5.5



Commerce, Real Estate **R162-7-3** Investigation and Enforcement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26835

FILED: 12/05/2003, 09:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In order to accommodate on-line license renewal in the future, the Division will allow applicants for renewal to certify that they have met the continuing education requirements for renewal, and then will perform spot-checks to determine if they have told the truth. The Division therefore needs to include the investigation of applicants for license renewal in its list of investigative activities.

SUMMARY OF THE RULE OR CHANGE: Investigation of applications for license renewal is added to the list of Division investigative activities.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division already has statutory authority to investigate applicants for renewal in Section 61-2-11. Therefore, adding this particular activity to a list of investigative activities in a rule has no financial impact on the Division's budget or on any other State agency.

❖ **LOCAL GOVERNMENTS:** The list of activities the Division of Real Estate investigates does not involve local government, and therefore has no financial impact on local government.

❖ **OTHER PERSONS:** As explained in "State budget" above, this rule change does not give the Division any more authority than it already has. It does not require other persons to do anything additional and it does not prohibit other persons from doing any activity. Therefore the anticipated cost or savings to other persons is zero.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only effect of the rule change is to include investigation of applicants for license renewals in the Division's list of specific investigative activities. The Division is already authorized by statute in

Section 61-2-11 to investigate applicants for renewal and therefore the inclusion of this activity in a list of activities in an administrative rule has no financial effect on licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated as a result of this rule filing.

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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-7. Enforcement.

R162-7-3. Investigation and Enforcement.

7.3. The investigative and enforcement activities of the Division shall include the following: investigation of information provided on new license applications and applications for license renewal; evaluation and investigation of complaints; auditing licensees' business records, including trust account records; meeting with complainants, respondents, witnesses and attorneys; making recommendations for dismissal or prosecution; preparation of cases for formal or informal hearings, restraining orders or injunctions; working with the assistant attorney general and representatives of other state and federal agencies; and entering into proposed stipulations for presentation to the Commission and the director.

KEY: real estate business

~~[April 23, 1998]~~2004

Notice of Continuation June 3, 2002

61-2-5.5



Commerce, Real Estate

R162-202

Residential Mortgage Renewal Period

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26837

FILED: 12/05/2003, 10:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rules for residential mortgage licensing are being reordered into a more logical organization. The information on renewal in current Rule R162-202 will be moved to a new rule, Rule R162-207, and replaced by a new rule on initial application. (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and is effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The new rule will provide procedures for submission of initial licensing applications and standards for evaluation of those applications.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The procedures for licensing of those engaged in the residential mortgage business do not impact any state agencies and therefore will have no impact on the State budget.

❖ LOCAL GOVERNMENTS: None--Local governments are also not impacted by procedures for licensing of those engaged in the residential mortgage business and therefore these rules will have no impact on local governments.

❖ OTHER PERSONS: None is anticipated. Only those engaged in the business of residential mortgage loans are affected by the procedures for their licensure. These rules do not increase the cost of applying for a residential mortgage license. They simply define the procedures and list the information that must be submitted with an application. These rules also define the criteria for evaluation of applications. To the extent that a person may decide not to apply after reading how bad acts in his past may result in a denial of his application, this rule may prevent a person with a troubled past from spending money on examination and application fees in a futile attempt to obtain a license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rules do not increase the cost of applying for a residential mortgage license. They simply define the procedures and list the information that must be submitted with an application. These rules also define the criteria for evaluation of applications. To the extent that a person may decide not to apply after reading how bad acts in his past may result in a denial of his application, this rule may prevent a person with a troubled past from spending money on examination and application fees in a futile attempt to obtain a license.

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 filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act (H.B. 277, 2003 General Session).

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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-202. ~~[Residential Mortgage Renewal Period]~~Initial Application.

R162-202-1. ~~[Residential Mortgage Renewal Period]~~Initial Application.

~~[A registration under the Utah Residential Mortgage Practices Act shall be valid for a period of two years from the date of registration.]~~

202.1 Effective January 1, 2004, an individual applying for an initial license is required to have passed the licensing examination approved by the commission before making application to the division for a license.

202.1.1 All examination results are valid for 90 days after the date of the examination. If the applicant does not submit an application for licensure within 90 days after successful completion of the examination, the examination results shall lapse and the applicant shall be required to retake and successfully pass the examination again in order to apply for a license.

202.2 All applications must be made in the form required by the division and shall include the following information:

202.2.1 Any name under which the individual will transact business in this state;

202.2.2 The address of the principal business location of the applicant;

202.2.3 The home street address and home telephone number of any individual applicant or control person of an entity applicant;

202.2.4 A mailing address for the applicant;

202.2.5 The date of birth and social security number of any individual applicant or control person of an entity applicant;

202.2.6 Answers to a "Licensing Questionnaire" supplying information about present or past mortgage licensure in other jurisdictions, past license sanctions or surrenders, pending disciplinary actions, pending investigations, past criminal convictions or pleas, and/or civil judgments based on fraud, misrepresentation, or deceit;

202.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant or control person, review past and

present employment and education records, and to conduct a criminal history background check;

202.2.8 If an individual applicant or a control person of an entity applicant has been convicted of any felonies or misdemeanors involving moral turpitude within the ten years preceding application, the charging document, the judgment and sentencing document, and the case docket on each such conviction must be provided with the application; and

202.2.9 If an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied in the five years preceding application based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the documents stating the sanction taken against the license or registration and the reasons therefore must be provided with the application.

202.3 Incomplete Application. If an applicant for a license makes a good faith attempt to submit a completed application within 90 days after passing the examination, but the application is incomplete, the Division may grant an extension of the validity of the examination results for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. Following the extension period, the application will be denied as incomplete if the applicant has not supplied the missing documents or information.

202.4 All fees required in conjunction with an application for a license are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the licensing criteria.

202.5 Determining Fitness for Licensure.

202.5.1 Good Moral Character. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of good moral character, which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:

(a) The circumstances that led to any criminal convictions considered by the Commission and the Division;

(b) The amount of time that has passed since the individual's last criminal conviction;

(c) Any character testimony presented at the hearing and any character references submitted by the individual;

(d) Past acts related to honesty or moral character involving the business of residential mortgage loans;

(e) Whether the individual has been guilty of dishonest conduct in the five years preceding the application that would have been grounds under Utah law for revocation or suspension of a registration or license had the individual then been registered or licensed;

(f) Whether a civil judgment based on fraud, misrepresentation, or deceit has been entered against the individual, or whether a finding of fraud, misrepresentation or deceit by the individual has been made in a civil suit, regardless of whether related to the residential mortgage loan business, and whether any money judgment has been fully satisfied;

(g) Whether fines and restitution ordered by a court in a criminal proceeding have been fully satisfied, and whether the individual has complied with court orders in the criminal proceeding;

(h) Whether a probation agreement, plea in abeyance, or diversion agreement entered into in a criminal proceeding in the ten years preceding the application has been successfully completed;

(i) Whether any tax and child support arrearages have been paid; and

(j) Whether there has been good conduct on the part of the individual subsequent to the individual's offenses.

202.5.2 Competency to Transact the Business of Residential Mortgage Loans. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of competency to transact the business of residential mortgage loans, which shall include the following:

(a) Past acts related to competency to transact the business of residential mortgage loans;

(b) Whether a civil judgment involving the business of mortgage loans has been entered against the individual, and whether the judgment has been fully satisfied, unless the judgment has been discharged in bankruptcy;

(c) The failure of any previous mortgage loan business in which the individual engaged, and the reasons for any failure;

(d) The individual's management and employment practices in any previous mortgage loan business, including whether or not employees were paid the amounts owed to them;

(e) The individual's training and education in mortgage lending, if any was available to the applicant;

(f) The individual's training, education, and experience in the mortgage loan business or in management of a mortgage loan business, if any was available to the individual;

(g) A lack of knowledge of the Utah Residential Mortgage Practices Act on the part of the individual;

(h) A history of disregard for licensing laws;

(i) A prior history of drug or alcohol dependency within the last five years, and any subsequent period of sobriety; and

(j) Whether the individual has demonstrated competency in business subsequent to any past incompetence by the individual in the mortgage loan business.

202.6 Conversion of Existing Registrations. In order to comply with Section 61-2c-201(1), the division shall convert all existing registrations to licenses on January 1, 2004. The licenses issued to individuals under the authority of this rule shall be issued subject to Section 61-2c-202(4)(a)(ii).

KEY: residential mortgage loan origination
[December 24, 2001]2004
61-2c-103(3)



Commerce, Real Estate

R162-206

Licensing Examination

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26840

FILED: 12/05/2003, 10:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A recent amendment to the statute (H.B. 277, 2003 General Session) added a licensing examination requirement to the procedures for obtaining a residential mortgage license. This rule provides for the administration of that examination. (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and is effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This rule provides procedures for registering to take the examination and requires that both the state and national portions of the examination be passed within a six-month period of time.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2c-103(3), and 61-2c-202(4)(a)(i)(C)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--It will be more costly for the Division of Real Estate to administer the licensing of residential mortgage lenders, but those costs are due to the statutory change requiring the examination, not these rules. The procedures for licensing those persons who are engaged in the residential mortgage business do not impact any other state agencies and therefore will have no impact on the State budget.

❖ **LOCAL GOVERNMENTS:** None--Local governments are not impacted by procedures for the licensing of persons who are engaged in the residential mortgage loan business and therefore these rules will have no impact on local government.

❖ **OTHER PERSONS:** None--Only those persons who are engaged in the residential mortgage loan business are affected by these rules. Although there will be an increased cost to those applying for a residential mortgage license because they will now have to pay examination fees, those costs are due to the statutory changes made by H.B. 277 and are not caused by this rule implementing those changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be an increased cost to those applying for a residential mortgage license because they will now have to pay examination fees. However, those costs are due to the statutory changes made by H.B. 277 and are not caused by this rule implementing those changes.

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 filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act (H.B. 277, 2003 General Session).

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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.**R162-206. Licensing Examination.****R162-206-1. Licensing Examination.**

206.1 In order to register for the licensing examination, the applicant shall deliver an application to take the examination, together with the applicable examination fee to the testing service designated by the division. If the applicant registers for the examination but fails to take a scheduled examination, the examination fee will be forfeited unless the applicant has complied with the Change/Cancel Policy in the candidate handbook furnished to the applicant by the examination provider.

206.2 The licensing examination will be a multiple choice examination and will consist of a national portion and a Utah-specific portion. Both portions of the examination must be passed within a six-month period of time.

KEY: residential mortgage loan origination**2004****61-2c-103(3)****61-2c-202(4)(a)(i)(C)**

Commerce, Real Estate
R162-207
License Renewal

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26839

FILED: 12/05/2003, 10:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rules for residential mortgage licensing are being reordered into a more logical organization. The information on renewal in current Rule R162-202 is moved into a new rule numbered Rule R162-207 and has been expanded upon to provide renewal procedures. Provisions are also added to implement recent statutory changes (H.B. 277, 2003 General Session). (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and is effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The renewal process is set forth in rule, including the renewal of those registrations that are converted to licenses because of a recent statutory change (H.B. 277, 2003 General Session). The rule also provides standards for evaluating the fitness of applicants for renewal. It also provides a procedure to implement a new statutory provision, Subsection 61-2c-202(4)(a)(ii).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2c-103(3), and 61-2c-202(4)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The procedures for renewal of residential mortgage broker licenses do not impact state agencies and therefore will have no impact on the State budget.

❖ LOCAL GOVERNMENTS: None--Local governments are not impacted by procedures to license persons who are engaged in the residential mortgage loan business and therefore these rules will have no impact on local governments.

❖ OTHER PERSONS: None--Only those persons who are engaged in the residential mortgage loan business are affected by these rules. There will be an increased cost to existing licensees because they will be required to complete a licensing examination in order to keep practicing after January 1, 2005. However, those costs are due to the statutory changes made by H.B. 277 (2003 General Session) and not these rules implementing the changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be an increased cost to existing licensees because they will be required to complete a licensing examination in order to keep practicing after January 1, 2005. However, those costs are due to the statutory changes made by H.B. 277 (2003 General Session) and not these rules implementing the changes.

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 filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act (H.B. 277, 2003 General Session).

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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-207. License Renewal.

R162-207-1. License Renewal.

207.1 Renewal period. Registrations and licenses issued under the Utah Residential Mortgage Practices Act are valid for a period of two years.

207.1.1 Notwithstanding Section 207.1, an individual license shall be inactivated by the division on January 1, 2005 if the holder of that license has not by that date submitted proof to the division of having passed the examination required by Section 61-2c-202(4)(a)(i)(C). The holder of a license that has been inactivated under this section may not engage in the business of residential mortgage loans for which licensure under this chapter is required until the individual has provided to the division any forms required by the division to activate the license, along with proof of having passed the examination required by Section 61-2c-202(4)(a)(i)(C).

207.2 Renewal of converted licenses. If an individual whose existing registration was converted by the division to a license pursuant to R162-202.6 applies to renew after January 1, 2004, but before January 1, 2005, the division shall renew the license without requiring proof that the individual has passed the examination required by Section 61-2c-202(4)(a)(i)(C). The renewed license issued under the authority of this section shall be issued subject to Section 61-2c-202(4)(a)(ii).

207.3 Renewal process.

207.3.1 All applications for renewal must be made in the form required by the division and shall include the following:

207.3.1.1 A licensure statement in the form required by the division;

207.3.1.2 The renewal fee;

207.3.1.3 If the applicant in an individual, proof using forms approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2c-104;

207.3.1.4 The current home street address and home telephone number of any individual applicant or control person of an entity applicant;

207.3.1.5 A current mailing address for the applicant;

207.3.1.6 Answers to a "Licensing Questionnaire" supplying information about events that occurred in the preceding two years related to mortgage licensure in other jurisdictions, license sanctions or surrenders, pending disciplinary actions, pending investigations, criminal convictions or pleas, and/or civil judgments or findings based on fraud, misrepresentation, or deceit;

207.3.1.7 If, at the time of application for renewal, an individual applicant or a control person of an entity applicant is charged with, or since the last renewal has been convicted of or entered a plea to, any felony or misdemeanor, the following information must be provided on each conviction, plea, or charge: the charging document, the case docket, and the judgment and sentencing document, if applicable;

207.3.1.8 If, in the two years preceding application for renewal, an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied based on misconduct in a

professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the applicant must provide the documents stating the sanction taken against the license or registration and the reasons therefore; and

207.4 An entity submitting an application for renewal must at the time of application have a name registration with the Utah Division of Corporations that is current and in good standing. The division will not process an application for renewal unless it can verify that the applicant's name registration is current and in good standing.

207.5 Incomplete Application. If an applicant makes a good faith attempt to submit a completed application for renewal prior to the expiration date of the applicant's current registration or license, but the application is incomplete, the Division may grant an extension for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application.

207.6 All fees required in conjunction with an application for renewal are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the renewal criteria.

207.7 Determining Fitness for Renewal. The commission and the division shall determine fitness for renewal in accordance with Section 202.5 above.

KEY: residential mortgage loan origination

2004

61-2c-103(3)

61-2c-202(4)(a)(ii)

Commerce, Real Estate
R162-208
Continuing Education

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 26836

FILED: 12/05/2003, 10:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A recent change to the statute (H.B. 277, 2003 General Session) requires continuing education for those engaged in the business of residential mortgage loans, and authorizes the Utah Residential Mortgage Loan Regulatory Commission to establish the appropriate number of hours and appropriate subject matter for that continuing education. (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and is effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: The rule establishes the number of continuing education hours that are required to renew licenses and defines the subject matter that is acceptable. It also establishes an Education Committee to assist the Commission in approving continuing education topics. Finally, it provides the conditions under which on-line courses will be acceptable for continuing education.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2c-103(3), and 61-2c-104(7)(d)(ii)

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Dexter Bell, Director

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--It will be more costly for the Division of Real Estate to process license renewals because it will have to check for proof of completion of the appropriate number of continuing education hours, but those costs are due to the statutory change requiring continuing education and not to these rules. The continuing education requirements for residential mortgage lenders do not impact any other state agencies and therefore will have no impact on the State budget.

❖ LOCAL GOVERNMENTS: None--Local government is not affected by the continuing education requirements for residential mortgage lenders and therefore these rules will have no impact on local governments.

❖ OTHER PERSONS: None--Only those persons who are engaged in the business of residential mortgage loans are affected by these rules. There will be an increased cost to mortgage licensees because they will be required to complete a continuing education requirement at their own expense in order to renew. However, those costs are due to the statutory changes made by H.B. 277 (2003 General Session) and not caused by these rules implementing those changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be an increased cost to mortgage licensees because they will be required to complete a continuing education requirement at their own expense in order to renew. However, those costs are due to the statutory change made by H.B. 277 (2003 General Session) and not caused by these rules implementing those changes.

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 filing that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act (H.B. 277, 2003 General Session).

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 02/02/2004.

R162. Commerce, Real Estate.

R162-208. Continuing Education.

R162-208-1. Continuing Education.

208.1 Required Hours of Continuing Education. As authorized by Section 61-2c-104(7)(d)(ii)(A), the Utah Residential Mortgage Regulatory Commission has set the number of hours of continuing education required for renewal as follows:

208.1.1 Individuals with renewal dates on or before December 31, 2005 - zero credit hours.

208.1.2 Individuals with renewal dates after December 31, 2005 - fourteen credit hours.

208.2 Proof of continuing education hours. Proof of continuing education hours must be in the form required by the division.

208.3 Credit Hours. For the purpose of this rule, a credit hour is defined as 50 minutes of education within a 60 minute time period. A 10 minute break may be taken for every 50 minutes of education. Education credit will be limited to a maximum of 8 credit hours per day.

208.4 Subject Matter. The following subject matter is acceptable for continuing education credit:

208.4.1 Each time the licensee renews, the required 14 credit hours must include a minimum of 2 credit hours of ethics and a minimum of 3 credit hours related to compliance with Federal and State laws governing mortgage lending.

208.4.2 The balance of the credit hours required for renewal may consist of any courses related to residential mortgage principles and practices that, in the opinion of the commission, would enhance the competency and professionalism of licensees.

208.4.3 The division will maintain and will make available to any person upon request a list of course topics that have been approved by the commission as acceptable for continuing education purposes. The division shall also post the list of course topics on its website.

208.5 Unacceptable Subject Matter. The following topics are not acceptable for continuing education purposes:

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

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

208.5.3 Meetings held in conjunction with the general business of the licensee and the entity for which the licensee conducts residential mortgage business, such as sales meetings, or in-house staff meetings unless the in-house staff meetings consist of training on the subjects set forth in Section 61-2c-104(7)(d)(i).

208.6 Education Committee. The commission will appoint an Education Committee, the purpose of which will be to assist the commission in approving continuing education course topics. The Education Committee will make recommendations to the

commission about whether any particular course topic is sufficiently related to residential mortgage principles and practices, and whether the topic would tend to enhance the competency and professionalism of licensees, to justify placing the topic on the list of course topics that are acceptable for continuing education purposes. The commission may accept or reject the Committee's recommendation on any course topic.

208.6.1 Any licensee or any course provider may request that the Education Committee recommend to the commission that a specific topic be approved as an acceptable topic for continuing education purposes. The request must be made in writing, addressed to the Education Committee in care of the division, and must state specific reasons why the requester believes the topic qualifies for continuing education purposes.

208.6.2 If the Education Committee turns down a request to approve a certain topic for continuing education purposes, the party who requested that the topic be approved may petition the commission on an individual basis for evaluation and approval of the topic as being acceptable for continuing education purposes. The Petition must be made in writing, addressed to the commission in care of the division, and must state specific reasons why the requester believes that the topic qualifies for continuing education purposes. If the commission finds that the topic is acceptable for continuing education purposes, the commission shall direct the division to add the topic to the list maintained by the division of approved continuing education topics.

208.7 The course provider shall issue a course completion certificate in the form required by the division to all licensees who successfully complete a course in a topic that is approved for continuing education purposes. The course completion certificate shall indicate the number of credit hours successfully completed by the student and must be signed by the instructor who taught the course.

208.8 On-line courses. On line-courses may be accepted by the division for continuing education purposes if they comply with all of the other provisions of this rule and if: a) the student who successfully completes a course is able to print from the course provider's web site a continuing education certificate to submit to the division that meets the requirements of Section 208.7 above; and b) the course provider has methods in place to determine whether a student has successfully completed a course and to insure that only those students who have successfully completed a course are able to print a course completion certificate.

KEY: residential mortgage loan origination

2004

61-2c-103(3)

61-2c-104(7)(d)(ii)



Education, Administration
R277-462
 Comprehensive Guidance Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26850

FILED: 12/15/2003, 16:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide Comprehensive Guidance funding for charter schools and to adjust the funding base slightly for all schools.

SUMMARY OF THE RULE OR CHANGE: The changes include charter schools as schools receiving Comprehensive Guidance funding.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated cost or savings to state budget because the funds available are apportioned among all schools, including charter schools.

❖ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local boards. Local boards received Comprehensive Guidance funds based on student numbers. Some of those funds will now fund charter school students.

❖ **OTHER PERSONS:** There are no anticipated cost or savings to other persons. Local boards and charter schools receive funding. Local boards and charter schools receive funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Funds will be distributed through local boards and charter schools.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.**R277-462. Comprehensive Guidance Program.****R277-462-1. Definitions.**

A. "ATE Consortium" means representatives of nine ATE Regional Planning Areas.

B. "Board" means the Utah State Board of Education and Applied Technology Education.

C. "Comprehensive Guidance Program" means the organization of resources to meet the priority needs of students through four delivery system components:

(1) guidance curriculum which means providing guidance content to all students in a systematic way;

(2) student educational and occupational planning component which means individualized education and career planning with all students;

(3) responsive services component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

D. "Comprehensive Guidance Steering and Advisory Committee" means representatives of district counseling supervisors, district ATE directors, PTA, the school counselor professional association, and practicing school counselors.

E. "Direct services" means time spent on the guidance curriculum, SEOP, and responsive services activities meeting students' identified needs as discerned by students, school personnel and parents consistent with district policy.

F. "SEOP" means student education occupation plan.

G. "Student achievement" means academic performance, career development, personal/social development, retention, attendance, SEOP outcomes and other measures of adequate yearly progress.

H. "USOE" means the Utah State Office of Education.

I. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-462-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1a-106(2)(b) which directs local boards to develop policies for the implementation of student education plans (SEP) or SEOPs, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Guidance Programs administered by the Board.

R277-462-3. Comprehensive Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Guidance Program funds, schools shall implement SEOP policies and practices, consistent with Section 53A-1a-106(2)(b), local board or charter school governing board policy, and the school improvement plan developed for Northwest Accreditation.

(2) ~~For each school which meets the qualifying criteria for a Comprehensive Guidance Program and which enrolls students in grades seven through twelve, districts shall receive from six to twenty four WPU's based on school enrollment as of October 1 of~~

~~the current fiscal year (e.g., 1-399 students = 6 WPU's, 400-799 students = 12 WPU's, 800-1,199 students = 18 WPU's, 1,200 students + = 24 WPU's)]~~ Each school, including charter schools, which has a USOE-approved Comprehensive Guidance Program shall receive a base of 6 WPU for the first 400 students as determined by the October 1 enrollment of the previous fiscal year, and a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students.

~~(3) If at any time following a school's initial approval of its Comprehensive Guidance Program, the school's enrollment drops below the funding level approved for the school, the school may be held harmless for the change in enrollment for a maximum of two years following the decline in enrollment into the lower funding category, funds permitting.]~~

~~(4)~~ (3) Priority for funding shall be given for grades nine through twelve for ATE programs including the Comprehensive Guidance Program and any remaining funds shall be allocated to grades seven and eight for the schools which meet Comprehensive Guidance Program standards. Funds directed to grades seven and eight shall be distributed according to the formula under R277-462-3A(~~4~~) following the distribution of funds for grades nine through twelve.

~~(5)~~ (4) The school or school district Comprehensive Guidance Program shall be integrated into the mission of the school and be consistent with the Northwest Accreditation process as defined in R277-413, Accreditation of Secondary Schools, Alternative or Special Purpose Schools. School counselors shall provide evidence that the Comprehensive Guidance Program contributes to student achievement included in the local school improvement plan developed as part of the Northwest Accreditation process.

~~(6)~~ (5) Schools shall qualify to receive Comprehensive Guidance Program funds through participation in a regular schedule of on-site review by team members designated by the district or charter school. Scheduling of the on-site review process shall be coordinated with the Northwest Accreditation process for secondary schools as defined in R277-413 and shall, at a minimum, take place every three years. Successful on-site reviews of the Comprehensive Guidance Program shall indicate a balance of activities in individual student planning, guidance curriculum, responsive services and system support.

~~(7)~~ (6) Comprehensive Guidance Program funds shall be distributed to districts for schools within the district or charter schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty percent of aggregate counselors time is devoted to DIRECT service to students through a balanced program of individual planning, guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory and steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Guidance Program contributing to school improvement teams;

(h) Responsive services are available to address the immediate concerns and identified needs of all students through an education-oriented and programmatic approach, and in collaboration with existing school programs and coordination with family, school and community resources;

(i) Delivery to students of a developmental and sequential guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Guidance Program. Guidance curriculum is prioritized according to the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Establishment of Student Education Occupation Planning (SEOP), both as a process and a product consistent with local board or charter school governing board policy and goals of the Utah Model for Comprehensive Guidance Program, Northwest Accreditation, R277-413, and Applied Technology Education, R277-911; and

(l) All Program elements are designed to recognize and address the diverse needs of every student.

B. All districts may qualify schools for the Comprehensive Guidance Program funds and districts and charter school governing boards shall certify in writing that all Program standards are being met by each school receiving funds under this rule and meet the following deadlines:

(1) The "Form for Program Approval" shall be received by the USOE from schools scheduled for review in the three year cycle no later than May [20] of each year for disbursement of funds the next year.

(2) Programs approved and forms submitted by December 20 of each year MAY be considered for partial disbursement, if funds are available.

R277-462-4. Use of Funds.

A. Funds disbursed for this Program shall be used by the district in the district secondary schools in grades seven through twelve to provide a guidance curriculum and an SEOP for each student at the school, to provide responsive services, and to provide system support for the Comprehensive Guidance Program. Such costs may include the following:

- (1) personnel costs;
- (2) career center equipment such as computers, or media equipment;
- (3) career center materials such as computer software, occupational information, SEOP folders, and educational information;
- (4) in-service training of personnel involved in the Comprehensive Guidance Program;
- (5) extended day or year if REQUIRED to run the Program; and
- (6) guidance curriculum materials for use in classrooms.

B. Funds shall not be used for non-guidance purposes or to supplant funds already being provided for the Comprehensive Guidance Program except that:

(1) Districts or charter schools may pay for the costs incurred in hiring NEW personnel as a means of reducing the pupil/counselor ratio and eliminating time spent on non-guidance activities in order to meet the Program criteria.

(2) Districts or charter schools may pay other costs associated with a Comprehensive Guidance Program which were incurred as a part of the Program during the implementation phase but which WERE NOT a regular part of the Program prior to that time.

R277-462-5. Variances and Reporting.

A. New schools that are created from schools that have Northwest accreditation and USOE Comprehensive Guidance Program approval may qualify for Comprehensive Guidance Program funding under this rule in the schools' first year of operation.

B. Charter schools and other new schools not meeting the requirements of R277-462-5A may receive comprehensive guidance program funding following two years of planning, training and program implementation.

[A]C. The USOE shall monitor the Program and provide an annual report on its progress and success.

[B]D. Districts or charter schools shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program as required or requested.

KEY: public education, counselors

~~[November 4, 2002]~~2004

Notice of Continuation September 30, 1999

Art X Sec 3

53A-15-201

53A-17a-131.8



Education, Administration

R277-517

Athletic Coaching Certification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26852

FILED: 12/15/2003, 16:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to include athletic coaches in the Computer Aided Credentials of Teachers in Utah System (CACTUS), and to inform parents of coaching staff qualifications through an annual school performance report.

SUMMARY OF THE RULE OR CHANGE: The rule adds the names of athletic coaches to the CACTUS system, and requires information be provided to parents about coaching staff qualifications through an annual school performance report.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated cost or savings to state budget. Providing information on CACTUS and to parents will be an additional responsibility of existing staff members.

❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local boards. The responsibility of providing information about athletic coaching staffs on CACTUS and to parents will be an additional responsibility of existing staff members.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The responsibility of providing information about athletic coaching staffs on CACTUS and to parents shall be a staff responsibility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Providing information on CACTUS and to parents will be the additional responsibility of existing staff members.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-517. Athletic Coaching Certification.

R277-517-1. Definitions.

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

B. "Athletic coach" means any paid individual whose responsibilities include coaching or advising an athletic team, including both men's and women's baseball, basketball,

cheerleading, cross-country/track, drill team, football, golf, soccer, softball, swimming and diving, tennis, volleyball, and wrestling.

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

[B]D. "Board" means the Utah State Board of Education.

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

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

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

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

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

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

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

R277-517-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-3-602.5(2)(j) which requires the Board to develop a school performance report to inform the state's residents of the quality of schools and the educational achievement of students in the state's public education system regarding staff qualifications, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensing of educators, and by Section 53A-6-101 through 109 which discusses educator licensing.

B. The purpose of this rule is to mandate training for individuals employed or acting as coaches in the public schools and to establish criteria for licensed educators [seeking]assigned to athletic coaching positions in Utah secondary schools.

C. It is the Board's intent that athletics and extracurricular activities remain supplemental to the Core Curriculum. It is the preference of the Board that school districts hire licensed educators as coaches and ensure that athletic coaches needed in addition to licensed educators receive training consistent with this rule. It is the Board's preference that all athletic coaches, including volunteer coaches, are trained consistent with this rule.

R277-517-3. Athletic Coaching Training and Certification.

A. All athletic head coaches and assistant coaches shall submit to a criminal background check consistent with Section 53A-3-410 as a condition for employment or appointment.

B. All other individuals who have significant and unsupervised access to students, including coaches (both paid and volunteer) and extracurricular activity advisors, shall have criminal background checks consistent with Section 53A-3-410 as a condition for employment or appointment or participation with students.

C. All athletic head coaches and paid assistant coaches of public high school sports should have completed Board-approved Athletic Coaching Training prior to beginning coaching responsibilities.

(1) Athletic coaches shall complete required training at the first available opportunity and no later than the first school year that they are employed or volunteer as public school coaches;

(2) Athletic coaches may not coach a second school year without completing training consistent with this rule; and

(3) Prior to coaching, athletic coaches shall complete basic first aid and adult CPR training through an approved or recognized program consistent with Red Cross standards available from the American Red Cross offices or school district offices.

R277-517-4. Compliance.

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

(1) reporting to the Utah High School Activities Association [~~which shall report to~~] and the Board the following information:

(a) the names of Utah public school athletic coaches participating with public school students [~~and indicate if they are licensed or unlicensed educators~~]; and

(b) the school and specific assignment of the school athletic coach; and

(c) whether or not the school athletic coach is a licensed educator; and

(~~2~~) d documentation of the training received by the coaches identified in R277-517-1 [~~A~~] [~~B~~]; and

(e) documentation of the completion of a criminal background check required under Section 53A-3-410, including resolution of any relevant problems.

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

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

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

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

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

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

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

(1) the prevention and care of athletic injuries;

(2) bio-physiology including nutrition, drugs, biomechanics and conditioning;

(3) emergency life support skills, to include advanced first aid and CPR;

(4) pedagogy of coaching including skill analysis, learning theories and progressions;

(5) psycho-social aspects of sports, competition, and coaching including the psychology of performance, role modeling, leadership, sportsmanship, competition, human relationships, and public relations;

(6) motor learning including adolescent growth and development, physical, social, and emotional stress and limitations, external social and emotional pressures;

(7) officiating athletic events, local district rules and regulations, High School Activities Association by-laws and interpretations of rules, and legal issues in sports and school activities; and

(8) sports management and philosophy including sports law, risk management and team management.

KEY: [~~teacher~~] coaching certification, athletics

[~~March 5, 2002~~] 2004

Notice of Continuation May 14, 2001

Art X Sec 3

53A-1-401(3)

53A-1-402(1)(a)

53A-6-101 through 109



Education, Administration

R277-520

Appropriate Licensing and Assignment of Teachers

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 26851

FILED: 12/15/2003, 16:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed and reenacted to provide new definitions and procedures to comply with federal law (No Child Left Behind Act) and recently enacted state law (S.B. 154) 2003 Legislative Session. (DAR NOTE: S.B. 154 is found at UT L 2003 Ch 315, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: The rule eliminates old definitions and adds the following definitions required by state and federal law including: "Core academic subjects," "demonstrated competency," "highly qualified," "HOUSSE

standards," "No Child Left Behind Act," and "State qualified." The new rule provides procedures for alternative license routes-both district/charter school-specific and state. Also the new rule provides standards for both highly qualified and state qualified teachers.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be additional costs for distinguishing between state qualified and highly qualified teachers and tracking educators who follow alternative licensing routes. There are no additional funds for these increased responsibilities; they will be absorbed by existing staff.

❖ LOCAL GOVERNMENTS: There may be additional costs for distinguishing between state qualified and highly qualified teachers and tracking educators who follow alternative licensing routes. There are no additional funds for these increased responsibilities; they will be absorbed by existing staff. There may also be savings for local boards who may employ less qualified educators and pay them lower salaries.

❖ OTHER PERSONS: There may be additional costs for individual educators who must take district courses or higher education courses to become highly qualified as is required in certain schools. District in-service classes are usually free of charge; higher education courses cost \$100-\$200 per semester hour. In the 2002-03 school year, there were 1,000+ Utah educators who do not meet the state's minimum licensing or endorsement requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be additional costs for individual educators who must take district courses or higher education courses to become highly qualified as is required in certain schools. District in-service classes are usually free of charge; higher education courses cost \$100-\$200 per semester hour. In the 2002-03 school year, there were 1,000+ Utah educators who do not meet the state's minimum licensing or endorsement requirements. Individual educators may have to bear some of these costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

[R277-520. Rule on Appropriate Assignment of Teachers.

R277-520-1. Definitions.

— A. "Board" means the Utah State Board of Education.

— B. "Endorsement" means a specialty field or area listed on the teaching certificate which indicates the specific qualification(s) of the holder.

— C. "Basic certificate" means the initial certificate issued by the Board which permits the holder to be employed in the public school system as an educator.

— D. "Standard certificate" means a certificate issued by the Board after a holder has demonstrated competence under the Basic Certificate.

— E. "Eminence" means distinguished superiority as compared with others in rank, status, character, and attainment or superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought.

— F. "Demonstrated competence" means that a teacher shall show he has the expertise to teach a specific class through the use of lines of evidence such as course work completed, letters of verification from colleagues, standardized test scores, or evidence of student performance.

— G. "Restricted endorsement" means that the subject matter endorsement shall be approved for a teacher's successful completion of not fewer than nine (9) quarter hours of state approved college or in-service course work in each of the subject areas in which he is assigned. This endorsement is available only to teachers in necessarily existent small schools, rural secondary schools, alternative high schools, homebound teaching programs, special education programs, adult education high schools, or similar programs.

— H. "Letter of authorization" means special permission given by the Board to a district to employ an underqualified individual as defined by this rule.

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

R277-520-2. Authority and Purpose.

— A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a), U.C.A. 1953, which authorizes the Board to rank, endorse, or classify licenses.

— B. The purpose of this rule is to provide for teachers to receive appropriate teaching endorsements from the Board.

R277-520-3. Appropriate Assignment of Certificated Personnel.

— A. Early childhood teachers (kindergarten through 3) shall hold Basic or Standard Early Childhood certificates.

— B. Elementary teachers (one through 8) shall hold Basic or Standard Elementary Certificates. Those teachers teaching in grades 7 and 8 must be subject-specific endorsed in the subject(s) they are teaching.

— C. Secondary school teachers, including middle level and junior high, shall hold Basic or Standard Certificates with endorsements in the subject(s) in which they teach.

— (1) Secondary teachers assigned to integrated subject, block, or core programs where two or more subjects are included, such as combinations of English and social studies or math and science, must hold an endorsement in at least one of the subjects.

— (2) A secondary or middle level teacher may be assigned in a subject area for which he is not endorsed if the school district requests and receives a Letter of Authorization from the Board.

R277-520-4. Routes by Which the Underprepared Teacher May Receive the Appropriate Endorsement.

— A. Teachers shall be endorsed if they complete a major, minor, or composite in the subject area corresponding to their assignment, or

— B. Teachers may choose to complete a Board-approved in-service program in the appropriate subject matter area, or

— C. Teachers may demonstrate competency in the subject matter area. In order to receive an endorsement through demonstrated competency the educator must have taught the course during two of the past five years and submit information and verification through the demonstrated competency lines of evidence.

— "ATC only" certificate or endorsement:

— Educators employed by Utah Applied Technology Centers shall be allowed to demonstrate competence for certification or endorsement by requesting a competency evaluation from the USOE if they have been employed in the subject matter area(s) for two of the past five years.

R277-520-5. Exemptions.

— A. "Grandfather provision": teachers assigned to teach classes for more than the previous three years, during which time they were not endorsed, or authorized under R277-512, may be exempted from the endorsement requirement by applying on forms available through the USOE Certification Office.

— B. "Eminence or special qualification authorization": "eminently qualified" individuals may teach no more than two periods a day in accordance with R277-511. This status shall be renewed annually.

— C. "Special authorization":

— (1) Educators in any educational program who are assigned to teach out of their area(s) of endorsement may be given special authorization to teach no more than two classes per day in any one subject if they have at least nine quarter hours or equivalent semester hours of state-approved course work in the assigned subject area.

— (2) Authorization may be extended for two additional years provided that the teacher completes nine quarter hours or equivalent semester hours of approved course work each year.

— (3) At the end of the three year period, the teacher must be eligible for an endorsement in the subject area or shall no longer be permitted to teach the subject.

— D. "Restricted endorsement":

— (1) Educators assigned to teach several subjects in necessarily existent small schools or rural secondary schools, alternative high schools, homebound teaching programs, special education and resource programs including academic subjects, adult education high

school completion programs, or other USOE approved circumstances shall hold a Basic or Standard Certificate with endorsement(s) in one or more core subjects plus not fewer than nine quarter hours or equivalent semester hours of state approved college or in-service course work in each of the subject areas in which they are assigned.

— (2) Educators identified in Subsection D(1) will receive a Restricted Endorsement valid for the specific assignment only.

R277-520-6. Penalty for Non-Compliance.

— A. If educators do not meet any of the requirements for certification, endorsement, exemption, or authorization, state funds may be withheld from the employing school district.

— B. If the recommendation of the Certification Committee of the Board is for reduction of state funding, the information will be transmitted, after approval by the Board, to the School Finance Section of the USOE.

**KEY: teacher certification, teacher endorsement[‡]
1990**

Notice of Continuation July 12, 2000

Art X Sec 3

53A-1-401(3)

53A-6-104(2)(a)]

R277-520. Appropriate Licensing and Assignment of Teachers.

R277-520-1. Definitions.

— A. "At will employment" means employment that may be terminated for any reason or no reason with minimum notice to the employee consistent with the employer's designated payroll cycle.

— B. "Board" means the Utah State Board of Education.

— C. "Composite major" means credits earned in two or more related subjects, as determined by an accredited higher education institution.

— D. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

— E. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

— F. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought.

— G. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

— H. "HOUSSE" means high, objective, uniform state standard of evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).

— I. "LEA" means a school district or charter school.

— J. "Letter of authorization" means a designation given to an individual, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by a school district

for one year. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1G.

K. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

L. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as completion of Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, as provided in R277-522, a minimum of three years of successful teaching in a public or accredited private school, and completion of all NCLB requirements at the time the applicant is licensed.

M. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate in education or in a field related to a content area under R277-501-1M from an accredited institution.

N. "License areas of concentration" are obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

O. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

P. "Major equivalency" means 30 semester hours of USOE and local board-approved postsecondary education credit or CACTUS-recorded professional development in NCLB core academic subjects as appropriate to satisfy NCLB highly qualified status.

Q. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 910(11).

R. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

S. "State qualified" means that an individual has met the Board-approved requirements to teach core or non-core courses in Utah public schools.

T. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

U. "USOE" means the Utah State Office of Education.

R277-520-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank,

endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An early childhood teacher (kindergarten through 3) shall hold a Level 1, 2, or 3 license with an early childhood license area of concentration.

B. An elementary teacher (one through 8) shall hold a Level 1, 2, or 3 license with an elementary license area of concentration.

C. A secondary teacher (grades 6-12) including high school, middle-level, intermediate, and junior high schools, shall hold a Level 1, 2, or 3 license with a secondary license area of concentration with endorsements in all teaching assignment(s).

D. A teacher with a subject-specific assignment in grades 6, 7 or 8 shall hold a secondary license area of concentration with endorsement(s) for the specific teaching assignment(s) or an elementary license area of concentration with the appropriate subject/content endorsement(s).

E. An elementary (grades 7-8), a secondary or middle-level teacher may be assigned temporarily in a core or non-core academic area for which the teacher is not endorsed if the local board requests and receives a letter of authorization from the Board and the teacher is placed on an approved SAEP.

R277-520-4. Routes to Utah Educator Licensing.

A. In order to receive a license, an educator shall have completed a bachelors degree at an approved higher education institution and:

(1) completed an approved institution of higher education teacher preparation program in the desired area of concentration; or

(2) completed an approved alternative preparation for licensing program, under alternative routes to licensing, consistent with R277-503.

B. An individual may receive a Utah license with an applied technology area of concentration following successful completion of a USOE-approved professional development program for teacher preparation in applied technology education.

C. An individual may receive a district-specific, competency-based license under Section 53A-6-104.5 and R277-520-8.

R277-520-5. Eminence.

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1F, to teach or work in the public schools on a limited basis.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load.

C. Teachers working under an eminence authorization shall never be considered highly qualified.

D. Local boards shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the local board.

E. The local board of education that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. A local board of education that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

R277-520-6. State Qualified Teachers (Teachers Who Satisfy HOUSE Rules).

A. A teacher has a Utah Level 1, 2 or 3 license or a district-specific competency-based license.

B. A teacher has an appropriate area of concentration.

C. A teacher in grades 6-12 has the required endorsement for the course(s) the teacher is teaching by means of:

(1) an academic teaching major from an accredited postsecondary institution, or a passing score on content test(s) and pedagogy test(s), if available, or USOE-approved pedagogy courses; or

(2) an academic major or minor from an accredited postsecondary institution; or

(3) completion of a personal development plan under an SAEP in the appropriate subject area(s) as explained under R277-520-10 with approval from the USOE specialist(s) in the endorsement subject areas.

D. On an annual basis, local boards/charter school boards shall request letters of authorization for teachers who are teaching classes for which they are not endorsed.

(1) A qualified teacher working under an SAEP shall complete the program within two years.

(2) The district/charter school, with assistance from the USOE, shall review the progress of an individual under an SAEP annually.

(3) With written justification, the USOE may approve the continuation of an SAEP.

R277-520-7. Highly Qualified Teachers.

A. A secondary teacher (7-12) is considered highly qualified if the teacher meets the requirements of R277-501-4.

B. An elementary/early childhood teacher (grades K-8) is considered highly qualified if the teacher meets the requirements of R277-501-5.

R277-520-8. School District/Charter School Specific Competency-based Licensed Teachers.

A. The following procedures and timelines apply to the employment of educators who have not completed the traditional licensing process under R277-520-5A, B, or C:

(1) A local board/charter school board may apply to the Board for a letter of authorization to fill a position in the district.

(2) The employing school district shall request a letter of authorization no later than 60 days after the date of the individual's first day of employment.

(3) The application for the letter of authorization from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high Level of competency in each of the core academic subjects in which

the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test in each of the core academic subjects in which the teacher teaches.

(4) The application for the letter of authorization from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation, the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual employed under a letter of authorization leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The letter of authorization for an individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization.

B. The written copy of the state-issued district-specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL-SPECIFIC COMPETENCY-BASED LICENSE.

C. A school district/charter school may change the assignment of a school district/charter school-specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

D. School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-520-9. Routes to Appropriate Endorsements for Teachers.

Teachers shall be appropriately endorsed for their teaching assignment(s).

A. To be highly qualified, teachers may obtain the required endorsement(s) with a major or composite major or major equivalency consistent with their teaching assignment(s), including appropriate pedagogical competencies; or

B. Teachers may complete a professional development plan under an SAEP in the appropriate subject area(s) with approval from USOE Curriculum specialists; or

C. Teachers may demonstrate competency in the subject area(s) of their teaching assignment(s). In order to be endorsed through demonstrated competency, the educator shall pass designated Board-approved content knowledge and pedagogical knowledge assessments as they become available.

D. Individuals shall be properly endorsed consistent with R277-520-3 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds.

R277-520-10. State-Approved Endorsement Program (SAEP).

A. Teachers in any educational program who are assigned to teach out of their area(s) of endorsement shall participate in an SAEP and make satisfactory progress within the period of the SAEP as determined by USOE specialists.

B. The employing school district shall identify teachers who do not meet the state qualified definition and provide a written justification to the USOE.

C. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

D. An SAEP may be granted for one two-year period and may be renewed by the USOE, upon written justification from the school district, for one additional two-year period.

R277-520-11. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately identify teachers not meeting the definition of state qualified teacher under this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula.

C. Local boards/charter school boards shall report highly qualified educators in core academic subjects and educators who do not meet the requirements of highly qualified educators in core academic subjects beginning July 1, 2003.

KEY: educator, license, assignment

2004

Notice of Continuation July 12, 2000

Art X Sec 3

53A-1-401(3)

53A-6-104(2)(a)

Education, Administration

R277-524

Paraprofessional Qualifications

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26853

FILED: 12/15/2003, 16:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides standards for paraprofessionals consistent with federal No Child Left Behind (NCLB) requirements.

SUMMARY OF THE RULE OR CHANGE: This rule provides appropriate duties for paraprofessionals, required training for paraprofessionals, and variances for certain types of paraprofessionals.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated cost or savings to state budget. There are no known state funds provided specifically for paraprofessional training. Consequently, local

boards and individuals will have to absorb the cost of required training.

❖ LOCAL GOVERNMENTS: There are no known state funds provided specifically for paraprofessional training. Consequently, local boards and individuals will have to absorb the cost of required training. The state has no reliable estimate of inadequately trained paraprofessionals at this time.

❖ OTHER PERSONS: There are no known state funds provided specifically for paraprofessional training. Consequently, local boards and individuals will have to absorb the cost of required training. The state has no reliable estimate of inadequately trained paraprofessionals at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no known state funds provided specifically for paraprofessional training. Consequently, local boards and individuals will have to absorb the cost of required training. The state has no reliable estimate of inadequately trained paraprofessionals at this time.

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

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY UT 84111-3272, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-524. Paraprofessional Qualifications.

R277-524-1. Definitions.

A. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB).

B. "Direct supervision of a licensed teacher" means:

(1) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher

evaluates the achievement of the students with whom the paraprofessional works; and

(2) the paraprofessional works in close and frequent proximity with the teacher.

C. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

D. "Paraprofessional" means an individual who works under the supervision of a teacher or other licensed/certificated professional who has identified responsibilities in the public school classroom.

R277-524-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(a)(i) which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and NCLB, P.L. 107-110, Title 1, Sec. 1119 which requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

B. The purpose of this rule is to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after January 6, 2002 consistent with NCLB requirements.

R277-524-3. Appropriate Assignments or Duties for Paraprofessionals.

Paraprofessionals may:

A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.

B. assist with classroom organization and management, such as organizing instructional or other materials;

C. provide assistance in computer laboratories;

D. conduct parental involvement activities;

E. provide support in library or media centers;

F. act as translators;

G. provide supervision for students in non-instructional settings.

R277-524-4. Requirements for Paraprofessionals.

A. Paraprofessionals hired before January 6, 2002 who function under R277-504-3A, and working in programs supported by Title I funds shall satisfy one of the following prior to January 6, 2006:

(1) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(2) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(3) The individual has satisfied a rigorous state assessment, approved by the Board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate; or

(4) The individual has satisfied a rigorous local assessment, approved by the local board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

B. Paraprofessionals hired after January 6, 2002 in programs supported by Title I funds shall satisfy R277-524-4B(1)(2)(3) or (4).

(1) Individual shall have earned a secondary school diploma or a recognized equivalent; and

(2) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(3) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(4) The individual has satisfied a rigorous state or local assessment about the individual's knowledge of an ability to assist students in core courses under NCLB.

C. The individual shall satisfactorily complete a criminal background check if he will have significant unsupervised access to students consistent with Section 53A-3-410.

R277-524-5. Variances.

The provisions of this rule do not apply to:

A. paraprofessionals who are proficient in English and a language other than English who provide translator services; or

B. paraprofessionals who have only parental involvement or similar responsibilities.

R277-524-6. Use of Funds.

Local education agencies may use Title I funds in addition to other funds available and identified by the local education agency to support ongoing training and professional development for paraprofessionals.

KEY: paraprofessional qualifications, NCLB 2004

Art X Sec 3

53A-1-401(3)

53A-1-402(1)(a)(I)

P.L. 107-110, Title 1, Sec. 1119



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-9

Federally Qualified Health Centers

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26854

FILED: 12/15/2003, 17:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was requested by Federally Qualified Health Centers (FQHC) to allow more flexibility in reimbursement and to ensure that all FQHC allowable costs are being reimbursed, as required by law. It also reflects a change in the State Plan relating to FQHC reimbursement.

SUMMARY OF THE RULE OR CHANGE: This is a new rule that creates an alternative method of payment for Federally Qualified Health Centers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5, 26-18-2.1, and 26-18-2.3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 405.2401, 2002 ed

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no impact to the state budget because Federally Qualified Health Centers are reimbursed for their actual costs as opposed to a fee-for-service percentage of charges. In as much as the Department made periodic payments to FQHCs under the existing system, the addition of an alternate payment system that may more closely reflect actual costs should not impose additional costs to the state.

❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because Federally Qualified Health Centers are not affiliated with, operated by, or in competition with local governments.

❖ **OTHER PERSONS:** Federally Qualified Health Centers are reimbursed for their actual costs as opposed to a fee-for-service percentage of charges. This rulemaking gives those centers more options to assure proper, timely payment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the Federally Qualified Health Centers will continue to be reimbursed for their actual costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rulemaking was requested by Federally Qualified Health Centers to allow more flexibility in reimbursement and to ensure that all FQHC allowable costs are being reimbursed, as required by law. It should have a positive impact on these Centers with little impact on the Medicaid budget. Scott D. Williams, Executive Director.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-9. Federally Qualified Health Centers.

R414-9-1. Introduction and Authority.

(1) This rule establishes Medicaid payment methodologies for federally qualified health centers (FQHCs).

(2) This rule is authorized by 42 CFR Subpart X, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-9-2. Definitions.

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Federally Qualified Health Center" means an entity that is a Federally Qualified Health Center under the provisions of 42 CFR Subpart X.

(2) "Rural Health Clinic" means an entity that is a Rural Health Clinic under the provisions of 42 CFR Subpart X.

R414-9-3. Payment Choices for FQHCs.

(1) An FQHC may elect to be paid under either the Prospective Payment Method (PPS) as described in R414-9-4 or the Alternate Payment Method (APM) as described in R414-9-5.

(2) If an FQHC elects to change its payment method in subsequent years, it must elect to do so no later than thirty days prior to the beginning of the FQHC's fiscal year by written notice to the Department.

R414-9-4. Prospective Payment System.

The Department pays FQHCs under a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472, 2002 edition, which are adopted by reference and modified as follows:

(1) The Department makes supplemental payments for the difference between the amounts paid by Managed Care Organizations (MCOs) that contract with FQHCs and the amounts the FQHCs are entitled to under the PPS as they are estimated and paid quarterly to the FQHCs. The Department makes quarterly interim payments no later than thirty days after the end of the quarter based on the most recent prior annual reconciliation. As necessary, the Department settles annual reconciliations with each FQHC.

(2) The Department requires FQHCs to contract with local Mental Health service (MH) providers that are paid a capitation rate by DHCF to avoid duplicate payments. FQHC MH charges are

billed to MH providers which reimburse FOHCs on the basis of the MH provider fee schedule.

(3) For FOHCs servicing MCOs and capitated MH organizations, the Department annually determines and settles the difference between FOHC encounter rate and the MCO, MH, and third party liability reimbursement.

R414-9-5. Alternate Payment Method.

(1) The Department adopts an Alternate Payment Method (APM). An FOHC is required to calculate the Ratio of Beneficiary Charges to Total Charges Applied to Allowable Cost as part of its agreement with the federal government. As part of that calculation, it allocates allowable costs to Medicaid. The Department multiplies the Medicaid allowable costs to by the Medicaid charge percentage to determine the amount to pay. The Department makes interim payments on the basis of billed charges from the FOHC, which reduce the annual settlement amount. Third party liability collections by the FOHC for Medicaid patients also reduce the final cost settlements.

(2) An FOHC participating in the APM must provide the Department annual cost reports and other cost information required by the Department necessary to calculate the annual settlement within ninety days from the close of its fiscal year, including its calculations of its anticipated settlement. The Department reviews submitted cost reports and provides a preliminary payment, if applicable, to FOHCs. Within six months after the end of the FOHC's fiscal year, the Department conducts a review or audit of submitted cost reports and makes a final settlement. This allow for inclusion of late filed claims and adjustments processed after the submitted cost report was prepared. If the Department overpaid an FOHC, the FOHC must repay the overpayment. If the Department underpaid an FOHC, the Department shall pay the FOHC the underpaid amount.

(3) The Department compares the APM reimbursements with the reimbursements calculated using the PPS methodology described in R414-9-4 and pays the greater amount to the FOHC.

R414-9-6. Rural Health Clinics.

(1) The Department reimburses all RHCs through a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472.

(2) The Department pays each RHC the amount, on a per visit basis, equal to the amount paid in the previous RHC fiscal year, increased by the percentage increase in the Medicare economic index for primary care services, and adjusted to take into account any increase or decrease in the scope of services furnished by the RHC during that fiscal year.

(3) For newly qualified RHCs after State fiscal year 2000, the Department establishes initial payments either by reference to payments to other RHCs in the same or adjacent areas with similar caseloads, or in the absence of other RHCs, by cost reporting methods. After the initial year, payment is set using the Medicare economic index methods used for other RHCs, and adjustments for increases or decreases in the scope of service furnished by the RHC during that fiscal year.

KEY: Medicaid, facility, reimbursement

26-1-5

26-18-3

Public Service Commission, Administration **R746-100**

Practice and Procedure Governing Formal Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26849

FILED: 12/15/2003, 16:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to modify or add to the existing rule to acknowledge current practices which have evolved in administration of proceedings before the Commission. It is also intended to remove rule designation of consumer complaints as informal administrative proceedings under the Utah Administrative Procedures Act. It establishes time periods in which response and reply documents are to be filed. It eliminates an existing provision which set a specific day for what was designated as a "Law and Motion Calendar."

The amendment also makes other changes to correct or clarify wording or numbering.

SUMMARY OF THE RULE OR CHANGE: Consumer complaints will be formal adjudicative proceedings under the Utah Administrative Procedures Act; parties may submit exhibits on CD as well as floppy disks; response and reply documents are to be filed within 15 business days and 10 business days, respectively; Tuesday mornings will no longer be solely reserved for a "Law and Motion Calendar;" and consecutive line numbering will be used in prefiled, written testimony, to aid in witness examination and consistency between various copies of written testimony.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-4-1, 54-4-2, 54-7-1.5, 54-7-5, 54-7-9, 54-54-7-15, and 63-46b-4

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No change in costs or savings are anticipated from the amendments because the amendment does not change the existing practice before the Commission or set method of presentation or time periods for items submitted in administrative proceedings.

❖ LOCAL GOVERNMENTS: None, as the amendments do not affect local government activities.

❖ OTHER PERSONS: No change in costs or savings are anticipated from the amendments because the amendment does not change the existing practice before the Commission or set method of presentation or time periods for items submitted in administrative proceedings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None are expected because the amendment does not change the existing practice before the Commission or set method of presentation or time periods for items submitted in administrative proceedings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments comport with existing practice before the Commission or set method of presentation or time periods for items which are already submitted to the Commission in administrative proceedings.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Stroud or Sandy Mooy at the above address, by phone at 801-530-6714 or 801-530-6708, by FAX at 801-530-6796 or 801-530-6796, or by Internet E-mail at bstroud@utah.gov or smooy@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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.

R746-100. Practice and Procedure Governing Formal Hearings.

R746-100-1. General Provisions and Authorization.

A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints -- Consumer complaints ~~are designated as~~ may be converted to informal proceedings, pursuant to Section 63-46b-4.

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender

include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.

E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.

R746-100-2. Definitions.

A. "Applicant" is a party applying for a license, right, or authority or requesting agency action from the Commission from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges or presiding officers designated by ~~the~~ the Commission ~~["s-employ"]~~.

C. "Committee" is the Committee of Consumer Services, Department of Commerce.

D. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

E. "Consumer complaint" is a complaint of a retail customer against a public utility.

F. "Division" is the Division of Public Utilities, Utah State Department of Commerce.

G. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

H. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63-46b-4.

I. "Informal proceeding" is a proceeding so designated ~~by~~ these rules ~~by the Commission~~.

J. "Party" is a participant in a proceeding defined by Subsection 63-46b-2(1)(f).

K. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

L. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63-46b-2(1)(h), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge or hearing officer appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63-46b-3. It is not an informal or preliminary inquiry or investigation undertaken by the

Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63, Chapter 46a, the Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed or responding to an application, petition or other request for agency action.

~~S. "Staff" is the Commission staff. Staff participation in proceedings shall be limited pursuant to Section 54-1-6.]~~

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63-46b-3, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63-46b-6.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63-46b-3 and 63-46b-6:

- a. motions, oppositions, and similar filings in existing Commission proceedings;
- b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

Name of Attorney preparing or Signer of Pleading		
Address		
Telephone Number[
Date Submitted]		
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH		

In the Matter of the)	
Application, petition,)	Docket Number
etc.-- for complaints,)	
names of both complainant)	Type of pleading
and respondent should)	
appear)	

C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and typewritten, which may include a computer or word processor, if the type is easily legible and in the equivalent of at least 12 ~~[pitch elite]~~ point type. Pleadings shall be presented on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be

presented as an electronic word processing document, an exact copy of the paper version filed, and may be on a 3-1/2" floppy disk or compact disc (CD), using a Commission-approved format. Pleadings over five pages shall be double sided and three-hole punched.

D. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

E. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and ~~[f]~~ belief, there is good ground to support it.

F. Consumer Complaints --

1. Alternative dispute resolution, ~~[informal]~~ mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

G. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section ~~[the]~~ of the pleading, located after the heading or caption, entitled "Proceeding Time Period," which shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63-46b-3, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

H. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall ~~place the matter on~~ arrange a hearing date with the Commission's Law and Motion calendar and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.

I. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in ~~in formal proceedings in~~ accordance with Section 63-46b-6. ~~Responsive pleadings shall be required in informal proceedings and shall be filed in accordance with the provisions of Section 63-46b-6.~~

2. Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- Originals of pleadings shall be filed with the Commission in the format described in R746-100-3(C), together with the number of copies designated by the secretary of the Commission.

B. Notice -- Notice shall be given in conformance with Section 63-46b-3.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or notice of request for agency action, whichever is first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading. Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 business days and 10 business days, respectively, of the filing date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

R746-100-5. Participation.

Parties to a proceeding before the Commission, as defined in Section 63-46b-2, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission. The Division and Committee shall be given full participation rights in any case.

R746-100-6. Appearances and Representation.

A. Taking Appearances -- Parties shall enter their appearances at the beginning of a hearing or when designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding. Parties shall, in addition, fill out and submit to the Commission an appearance slip, furnished by the Commission.

B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah, may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.

R746-100-7. Intervention and Protest.

Intervention -- Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section 63-46b-9.

R746-100-8. Discovery.

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination.

The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. ~~[Rule 26(b)(4) restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.~~

~~3.]~~At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

[4]3. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, responses to, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

[5]4. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

R746-100-9. Prehearing Conference and Prehearing Briefs.

A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;
2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;
3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;
4. determining procedure to be followed at the hearing;
5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;
6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.

B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;
2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by the testimony;
3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;
2. delineate scope of cross-examination and set limits thereon if necessary;
3. identify and prenumber exhibits.

R746-100-10. Hearing Procedure.

A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the

hearing shall be served in conformance with Sections 63-46b-3(2)(b) and 63-46b-3(3)(e) at least five days before the date of the hearing or shorter period as determined by the Commission.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.

C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63-46b-11.

D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges or presiding officers employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.

E. Conduct of the Hearing --

1. Generally -- Hearings may be held before the full Commission, one or more commissioners,~~[-or]~~ administrative law judges or presiding officers employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary~~[-or]~~ trade secret or confidential material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission~~[-or]~~, before an administrative law judge or presiding officer, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal to the Commission or court of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:

- a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;
- b. if a person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;
- c. ~~[request that the Commission]~~take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary

evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination. ~~[except that of p]~~ Public witnesses may elect to provide unsworn statements.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked and parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations. An exhibit[s] offered by a witness shall also be presented as an electronic document, an exact copy of the paper version, filed on a 3-1/2" floppy disk or CD, using a format previously approved by the Commission.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63-46b-8(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days.

The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. To aid in the identification of text and the examination of witnesses, written testimony shall have each line of written test numbered consecutively throughout the entire written testimony. Internal charts, exhibits or other similar displays included within or attached to written testimony need not be included within the document's internal line numbering. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses ~~[shall]~~ may be required to reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. ~~[Rate Case]~~ Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:

- a. be updated throughout the hearing;
- b. depict the final positions of each party on each issue at the end of the hearing; and
- c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings ~~[shall]~~ may be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit a written proposed ~~[findings of fact and conclusions of law]~~ order. ~~[The presiding officer may order proposed findings and conclusions in other matters as judged appropriate.]~~ The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.

R746-100-11. Decisions and Orders.

A. Generally -- Decisions and orders may be drafted by the Commission or by parties as the Commission may direct. Draft or proposed orders shall contain a heading similar to that of pleadings and bear at the top the name, address, and telephone number of the persons preparing them. Final orders shall have a concise summary of the case containing the salient facts, the issues considered by the Commission, and the Commission's disposition of them. A short synopsis of the order, placed at the beginning of the order, shall describe the final resolutions made in the order. ~~[Parties preparing final orders shall be responsible for preparing and filing the abstract.]~~

B. Recommended Orders -- If a case has been heard by less than the full Commission, or by an administrative law judge, the official hearing the case shall submit to the Commission a recommended report containing proposed findings of fact, conclusions of law, and an order based thereon.

C. Final Orders of Commission -- If a case has been heard by the full Commission, it shall confer following the hearing. Upon reaching its decision, the Commission shall draft or direct the drafting of a report and order, which upon signature of at least two Commissioners shall become the order of the Commission. Dissenting and concurring opinions of individual commissioners may be filed with the order of the Commission.

D. Deliberations -- Deliberations of the Commission shall be in closed chambers.

E. Effective Date -- Copies of the Commission's final report and order shall be served upon the parties of record. Orders shall be effective the date of issuance unless otherwise stated in the order. Upon petition of a party, and for good cause shown, the Commission may extend the time for compliance fixed in an order.

F. Review or Rehearing -- Petitions for review or rehearing shall be filed within [20]30 days of the issuance date of the order in accordance with Section 63-46b-[13]12 and served on other parties of record. Following the filing of a petition for review, opposing parties may file responsive memoranda or pleadings within [10]15 days. [Other p]Proceedings on review shall be in accordance with Section 54-7-17.

R746-100-12. Appeals.

Appeals from final orders of the Commission shall be to a court of appropriate jurisdiction.

R746-100-13. Ex Parte Communications.

A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:

B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party, or the party's counsel, agent, or other person acting on the party's behalf, shall engage in ex parte communications with a commissioner, administrative law judge, presiding officer, or any other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process[;] regarding a matter pending before the Commission. No commissioner, administrative law judge, presiding officer, or other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process[;] shall request or entertain ex parte communications.

C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:

1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;

2. from a party, or the party's counsel, agent, or other person acting on the party's behalf if the communication relates to matters of procedure only;

3. from a person when otherwise authorized by law;

4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the Commission;

5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in a proceeding;

6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents or other evidence filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.

D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.

[F]E. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, presiding officer, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication, the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.

[G]E. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

[H]G. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

[I]H. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a request to intervene in opposition to requested Commission action has been filed, whichever occurs first.

R746-100-14. ~~Law and Motion Calendar.~~

~~There shall be a Law and Motion Calendar on Tuesdays commencing at 9:00 a.m., or as otherwise established and~~

~~announced by the Commission, for the disposition of motions and like matters. It shall be the responsibility of parties filing law and motion matters to have them placed on the Commission's Law and Motion Calendar and to notify parties of record by written notice, or as otherwise directed by the Commission, of the time and place of hearings not fewer than five days before the hearings.~~

~~**R746-100-15.**~~ **]Rulemaking.**

A. How initiated --

1. By the Commission -- When the Commission perceives the desirability or necessity of adopting a rule, it shall draft or direct the drafting of the rule. During the drafting process, the Commission may request the opinion and assistance of any appropriate person. It may also, in its discretion, conduct public hearings in connection with the drafting. When the Commission is satisfied with the draft of the proposed rule, it may formally propose it in accordance with the Utah Rulemaking Act, 63-46a-4.

2. By others -- Persons may petition the Commission for the adoption of a rule. The petitions shall be accompanied by a draft of the rule proposed. Upon receipt the Commission shall review the petition and draft and if it finds the proposed rule desirable or necessary, it shall proceed as with proposed rules initiated by the Commission, including amending or redrafting. If the Commission finds the proposal unnecessary or undesirable, it shall so notify the petitioner in writing, giving reasons for its findings. No public hearing shall be required in connection with the Commission's review of a petition for rulemaking.

B. Hearing Procedure -- Hearings conducted in connection with rulemaking shall be informal, subject to requirements of decorum and order. Absent a finding of good cause to proceed otherwise, testimony and statements shall be unsworn, and there shall be no opportunity for participants to cross-examine. The Commission shall have the right, however, to freely question witnesses. Public hearings shall be recorded by shorthand reporter or electronically, at the discretion of the Commission, and the Commission may allow or request the submission of written materials.

~~**R746-100-15.**~~ **Deviation from Rules.**

The Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship~~[on a party]~~ which outweighs the benefits of the rule.

KEY: government hearings, public utilities, rules and procedures

~~[November 27, 2000]~~ **2004**

Notice of Continuation December 6, 2002

54-1-6

54-4-1

54-7-17

63-46b



End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends February 2, 2004. At its option, the agency may hold public hearings.

From the end of the waiting period through April 30, 2004, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Real Estate
R162-106-8
Draft Reports

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 26709
 Filed: 12/04/2003, 09:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Division of Real Estate investigators have observed an abuse of "draft reports" by some appraisers, which led to a proposed rule defining the conditions under which it is appropriate for an appraiser to release a "draft report" to a client. After considering public comment received on the proposed rule, the Utah Appraiser Licensing and Certification Board has decided to rewrite the proposed rule.

SUMMARY OF THE RULE OR CHANGE: The rule defines "draft report" and provides the circumstances under which a draft report may be released to a client. The change from the last version of the proposed rule to this one is that there will be no distinction between draft reports in residential property appraisal and draft reports in non-residential property appraisal. Also, draft reports will be required to be signed by the appraiser. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the November 15, 2003, issue of the Utah State Bulletin, on page 18. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-6(1)(l)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Presumably the State and the appraisers it hires would not engage in the abuse of "draft reports" that this rule is designed to prevent. Therefore, the rule should not increase the State's cost of obtaining appraisal services. While no direct, measurable savings to State government is anticipated if the abuse of draft reports is lessened, prevention of fraud in mortgage lending should have a positive impact on the business climate in Utah and might therefore positively impact the State budget in some indirect way.

❖ LOCAL GOVERNMENTS: None--The comments in the under "State budget" above apply equally to local government.

❖ OTHER PERSONS: None--This rule should not increase the cost to any person of obtaining an appraisal. While there would be no direct, measurable savings to other persons if the abuse of "draft reports" is lessened, less fraud in mortgage lending in Utah should make a better business climate in Utah and therefore might indirectly benefit other persons in some way.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. The cost of providing appraisal services should not change as a result of this rule. The rule simply defines conditions under which an appraiser may release a copy of a work in progress to a client.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment adds a provision regulating when draft reports by appraisers may be released to clients. This measure is intended to protect the public from improper use of draft reports by appraisers and to prevent fraud. A positive fiscal impact to businesses is therefore anticipated by this rule change. However, it is impossible to predict the amount of that fiscal impact.

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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.
R162-106. Professional Conduct.
R162-106-8. Draft Reports.

For the purpose of this rule, a "draft report" is defined as an appraisal report that is a work in progress and that has not yet been finished by the Appraiser.

~~[—106.8.1. Residential Property Appraisal. An appraiser may not release a draft report to a client in the appraisal of residential property unless: a) the property consists of more than four units; b) the first page of the report prominently identifies it as a draft; and c) the draft report has not been signed by the appraiser but complies with USPAP in all other respects.~~

~~—106.8.2 Non-Residential Property Appraisal. An appraiser may not release a draft report to a client in the appraisal of non-residential property unless: a) the first page of the report prominently identifies it as a draft; and b) the draft report has not been signed by the appraiser but complies with USPAP in all other respects.~~

] 106.8.1. An appraiser may not release a draft report to a client unless: a) the first page of the report prominently identifies it as a draft; b) the draft report has been signed by the appraiser; and c) the appraiser complies with USPAP in the preparation of the draft report.

KEY: real estate appraisals, conduct
~~2003~~2004
 Notice of Continuation March 27, 2002
 61-2b-27

▼ ————— ▼

**Money Management Council,
 Administration
 R628-19**

**Requirements for the Use of Investment
 Advisers by Public Treasurers**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 26676
 Filed: 12/15/2003, 17:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Money Management Council received comment from the Securities Division informing them that requiring federal investment advisers become licensed under the state of Utah caused problems for these advisers and in some instances, is not legal for them to be licensed in Utah.

SUMMARY OF THE RULE OR CHANGE: The requirement that any unlicensed investment adviser or adviser representative working with a public treasurer become licensed within 120 days has been deleted. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the October 15, 2003, issue of the Utah State Bulletin, on page 27. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-13

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No changes beyond those noted in the original rule filing DAR No. 26676, published in the October 15, 2003, Utah State Bulletin.
- ❖ LOCAL GOVERNMENTS: No changes beyond those noted in the original rule filing DAR No. 26676, published in the October 15, 2003, Utah State Bulletin.
- ❖ OTHER PERSONS: No changes beyond those noted in the original rule filing DAR No. 26676, published in the October 15, 2003, Utah State Bulletin.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No changes beyond those noted in the original rule filing DAR No. 26676, published in the October 15, 2003, Utah State Bulletin.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no additional fiscal

impact on businesses beyond those noted in the original filing of this rule, DAR No. 26676, published in the October 15, 2003, Utah State Bulletin.

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

MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 Room 215 STATE CAPITOL
 350 N STATE ST
 SALT LAKE CITY UT 84114-1103, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ann Pedroza at the above address, by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@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 02/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2004

AUTHORIZED BY: Larry Richardson, Chair

**R628. Money Management Council, Administration.
 R628-19. Requirements for the Use of Investment Advisers by
 Public Treasurers.**

R628-19-1. Authority.

This rule is issued pursuant to Section 51-7-18(2)(b).

R628-19-2. Scope.

This rule establishes basic requirements for public treasurers when using investment advisers.

R628-19-3. Purpose.

The purpose of this rule is to outline requirements for public treasurers who are considering utilizing investment advisers to invest public funds. These are minimum requirements and not exhaustive criteria to be used when choosing an adviser.

R628-19-4. Definitions.

- (1) For purposes of this rule:
 - (a) Investment adviser as used in this rule has the same meaning as defined in Section 61-1-13(15).
 - (b) Investment adviser representative as used in this rule has the same meaning as defined in Section 61-1-13(16).
 - (c) Realized rate of return means: yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.

R628-19-5. General Rule.

When considering and using an investment adviser the public treasurer shall follow these minimum requirements:

- (1) A person offering investment advisory services to a public treasurer shall at all times be licensed as an investment adviser or an

investment adviser representative with the Utah Securities Division. [~~Any unlicensed investment adviser or investment adviser representative currently serving a public treasurer has 120 days from the effective date of this rule to comply.~~]

(2) The public treasurer shall request and the investment adviser shall furnish, a clear and concise written explanation of any and all fees and the fee structure.

(3) The public treasurer shall request and the investment adviser shall furnish, examples of report formats which shall reflect at a minimum the following information:

(a) the realized rate of return on the funds under the advisers management reported monthly on an actual over 360 day basis; and

(b) a description of the security including the name, interest rate, maturity date and purchase date of the security.

(4) All transactions must be in full compliance with all aspects of the Money Management Act and Rules of the Council particularly those requirements governing safekeeping, utilizing certified

dealers, qualified depositories and purchasing only the types of securities listed in 51-7-11., 51-7-12. and 51-7-13. as applicable.

(5) Transaction confirmations shall be provided on every trade transacted for the public entity, within five business days of trade date by the certified dealer, to the public treasurer.

R628-19-6. Reporting to the Council.

When a public treasurer has contracted with an investment adviser for the management of public funds, the public treasurer shall provide the detail of those investments to the Council, pursuant to Section 51-7-18.2.

KEY: securities, investment adviser, public funds

~~2003~~2004

~~51-7-18(2)(b)~~

~~61-1-13~~



End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Commerce, Real Estate **R162-210** Examination, Initial Application, and Renewal

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 26833
FILED: 12/04/2003, 09:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This emergency rule provides procedures necessary to implement statutory changes (H.B. 277, 2003 General Session) that go into effect on January 1, 2004, related to the examination, initial licensing, and renewal of persons engaged in the business of residential mortgage loans. (DAR Note: H.B. 277 is found at UT L 2003 Ch 243, and is effective January 1, 2004.)

SUMMARY OF THE RULE OR CHANGE: This rule provides procedures for taking the mortgage examination and applying for a license and standards for the evaluation of those applications. It also establishes procedures to implement the change from "registrations" to "licenses", and establishes continuing education requirements for renewal.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2c-103(3), 61-2c-202(4)(a)(i)(C), and 61-2c-104(7)(d)(ii)(A)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--It will be more costly for the Division of Real Estate to administer the licensing of residential mortgage lenders, but those costs are due to

statutory changes, not these rules implementing the changes.

The procedures for licensing those persons who are engaged in the residential mortgage business do not impact any other state agencies and therefore will have no impact on the State budget.

❖ **LOCAL GOVERNMENTS:** None--Local governments are not impacted by the procedures for licensing persons who are engaged in the residential mortgage loan business and therefore these rules will have no impact on local governments.

❖ **OTHER PERSONS:** None--Only those persons who are engaged in the business of residential mortgage loans are affected by these rules. There will be an increased cost to those applying for a new or renewed residential mortgage license because they will now have to take an examination and pay examination fees. However, those costs are due to the statutory changes made by H.B. 277 (2003 General Session) and are not caused by these rules implementing those changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be an increased cost to those applying for a new or renewed residential mortgage license because they will now have to take an examination and pay examination fees. However, those costs are due to the statutory changes made by H.B. 277 (2003 General Session) and are not caused by these rules implementing those changes.

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 emergency rule change that was not already anticipated in recent legislative amendments to the Utah Residential Mortgage Practices Act (H.B. 277, 2003 General Session).

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation

of federal or state law.

On January 1, 2004, the Division of Real Estate must start administering statutory changes related to changing existing registrants to licensees, must require an examination of new applicants, and must administer continuing education provisions.

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

THIS RULE IS EFFECTIVE ON: 12/04/2003

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-210. Examination, Initial Application, and Renewal.

R162-210-1. Examination, Initial Application, and Renewal.

210.1 Effective January 1, 2004, an individual applying for an initial license is required to have passed the licensing examination approved by the commission before making application to the division for a license.

210.1.1 All examination results are valid for 90 days after the date of the examination. If the applicant does not submit an application for licensure within 90 days after successful completion of the examination, the examination results shall lapse and the applicant shall be required to retake and successfully pass the examination again in order to apply for a license.

210.2 All applications must be made in the form required by the division and shall include the following information in addition to that required by Section 61-2c-202:

210.2.1 Any name under which the individual will transact business in this state;

210.2.2 The address of the principal business location of the applicant;

210.2.3 The home street address and home telephone number of the applicant;

210.2.4 A mailing address for the applicant;

210.2.5 The date of birth and social security number of the applicant;

210.2.6 Answers to a "Licensing Questionnaire" supplying information about present or past mortgage licensure in other jurisdictions, past license sanctions or surrenders, pending disciplinary actions, pending investigations, past criminal convictions or pleas, and/or civil judgments based on fraud, misrepresentation, or deceit;

210.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant, review past and present

employment and education records, and to conduct a criminal history background check;

210.2.8 If an applicant has been convicted of any felonies or misdemeanors involving moral turpitude within the ten years preceding application, the charging document, the judgment and sentencing document, and the case docket on each such conviction must be provided with the application; and

210.2.9 If an applicant has had a license or registration suspended, revoked, surrendered, canceled or denied in the five years preceding application based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the documents stating the sanction taken against the license or registration and the reasons therefore must be provided with the application.

210.3 Incomplete Application. If an applicant for a license makes a good faith attempt to submit a completed application within 90 days after passing the examination, but the application is incomplete, the Division may grant an extension of the validity of the examination results for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. Following the extension period, the application will be denied as incomplete if the applicant has not supplied the missing documents or information.

210.4 All fees required in conjunction with an application for a license are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the licensing criteria.

210.5 Determining Fitness for Licensure.

210.5.1 Good Moral Character. The Commission and the Division will consider information necessary to determine whether an applicant for a license meets the requirement of good moral character, which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:

(a) The circumstances that led to any criminal convictions considered by the Commission and the Division;

(b) The amount of time that has passed since the individual's last criminal conviction;

(c) Any character testimony presented at the hearing and any character references submitted by the individual;

(d) Past acts related to honesty or moral character involving the business of residential mortgage loans;

(e) Whether the individual has been guilty of dishonest conduct in the five years preceding the application that would have been grounds under Utah law for revocation or suspension of a registration or license had the individual then been registered or licensed;

(f) Whether a civil judgment based on fraud, misrepresentation, or deceit has been entered against the individual, or whether a finding of fraud by the individual has been made in a civil suit, regardless of whether related to the residential mortgage loan business, and whether any money judgment has been fully satisfied;

(g) Whether fines and restitution ordered by a court in a criminal proceeding have been fully satisfied, and whether the individual has complied with court orders in the criminal proceeding;

(h) Whether a probation agreement, plea in abeyance, or diversion agreement entered into in a criminal proceeding in the ten years preceding the application has been successfully completed;

(i) Whether any tax and child support arrearages have been paid; and

(j) Whether there has been good conduct on the part of the individual subsequent to the individual's offenses.

210.5.2 Competency to Transact the Business of Residential Mortgage Loans. The Commission and the Division will consider information necessary to determine whether an applicant for a license meets the requirement of competency to transact the business of residential mortgage loans, which may include the following:

(a) Past acts related to competency to transact the business of residential mortgage loans;

(b) Whether a civil judgment involving the business of mortgage loans has been entered against the individual, and whether the judgment has been fully satisfied, unless the judgment has been discharged in bankruptcy;

(c) The failure of any previous mortgage loan business in which the individual engaged, and the reasons for any failure;

(d) The individual's management and employment practices in any previous mortgage loan business, including whether or not employees were paid the amounts owed to them;

(e) The individual's training and education in mortgage lending, if any was available to the applicant;

(f) The individual's training, education, and experience in the mortgage loan business or in management of a mortgage loan business, if any was available to the individual;

(g) A lack of knowledge of the Utah Residential Mortgage Practices Act on the part of the individual;

(h) A history of disregard for licensing laws;

(i) A prior history of drug or alcohol dependency within the last five years, and any subsequent period of sobriety; and

(j) Whether the individual has demonstrated competency in business subsequent to any past incompetence by the individual in the mortgage loan business.

210.6 Conversion of Existing Registrations. In order to comply with Section 61-2c-201(1), the division shall convert all valid registrations to licenses on January 1, 2004. The licenses issued to individuals under the authority of this rule shall be issued subject to Section 61-2c-202(4)(a)(ii).

210.7 Licensing Examination. In order to register for the licensing examination, the applicant shall deliver an application to take the examination, together with the applicable examination fee to the testing service designated by the division. If the applicant registers for the examination but fails to take a scheduled examination, the examination fee will be forfeited.

210.7.1 The licensing examination will be a multiple choice examination and will consist of a national portion and a Utah-specific portion. Both portions of the examination must be passed within a six-month period of time.

210.8 Renewal period. Registrations and licenses issued under the Utah Residential Mortgage Practices Act are valid for a period of two years.

210.8.1 Renewal of converted licenses. If an individual whose existing registration was converted by the division to a license pursuant to R162-210.6 applies to renew after January 1, 2004 but before January 1, 2005, the division shall renew the license without requiring proof that the individual has passed the examination required by Section 61-2c-202(4)(a)(i)(C). The renewed license issued under the authority of this section shall be issued subject to Section 61-2c-202(4)(a)(ii).

210.9 Required hours of Continuing Education. As authorized by Section 61-2c-104(7)(d)(ii)(A), the Utah Residential Mortgage Commission has set the number of hours of continuing education required for renewal as follows:

(a) Individuals with renewal dates on or before December 31, 2005 - zero hours.

(b) Individuals with renewal dates after December 31, 2005 - fourteen hours.

**KEY: residential mortgage loan origination
December 4, 2003
61-2c-103(3)
61-2c-202(4)(a)(i)(C)
61-2c-104(7)(d)(ii)(A)**



End of the Notices of 120-Day (Emergency) 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).

Corrections, Administration **R251-103** Undercover Roles of Offenders

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26832
FILED: 12/03/2003, 10:04

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 64-13-6(1)f mandates that the Department investigate criminal conduct involving offenders. Section 64-13-10 directs the Department to provide programs as necessary and as required to accomplish its purposes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: General requirements governing the use of offenders in undercover roles must be made available and adhered to by other criminal justice entities.

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

CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@utah.gov

AUTHORIZED BY: Michael P. Chabries, Executive Director

EFFECTIVE: 12/03/2003



Corrections, Administration **R251-105** Applicant Qualifications for Employment with Department of Corrections

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26831
FILED: 12/03/2003, 10:03

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 64-13-10 grants implied authority to hire persons qualified to accomplish the Department of Corrections' purpose of maintaining safe facilities. Section 64-13-25 establishes minimum standards for the organization and safe and professional operation of its programs. Section 63-46a-3 grants implied authority to make rules that affect the public. Subsection 64-13-10(2) gives Corrections explicit, broad rulemaking authority.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The public needs to be made aware of requirements for applicants for employment with the Department of Corrections.

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

CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at glduncan@utah.gov

AUTHORIZED BY: Michael P. Chabries, Executive Director

EFFECTIVE: 12/03/2003



Environmental Quality, Radiation
Control
R313-21
General Licenses

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 26846
FILED: 12/10/2003, 11:43

**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 19-1-106(1) created the Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(4) provided that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This was not a controversial rule. Review by the Radiation Control Board recommends continuation of this rule. No other comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material. No opposing comments have been received.

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

ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at sgiddings@utah.gov

AUTHORIZED BY: Dane Finerfrock, Manager

EFFECTIVE: 12/10/2003



Environmental Quality, Radiation
Control
R313-30
Therapeutic Radiation Machines

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 26847
FILED: 12/10/2003, 11:45

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-1-106(1) created the Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(4) provided that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This was not a controversial rule. Review by the Radiation Control Board recommends continuation of this rule. No other comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it establishes requirements for use of linear accelerators, superficial, and orthovoltage x-ray units in the administration of radiation therapy.

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

ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at sgiddings@utah.gov

AUTHORIZED BY: Dane Finerfrock, Manager

EFFECTIVE: 12/10/2003

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Environmental Quality, Radiation Control

R313-38

Licenses and Radiation Safety Requirements for Well Logging

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26845
FILED: 12/10/2003, 11:42

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-1-106(1) created the Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(4) provided that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health

hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This was not a controversial rule. Review by the Radiation Control Board recommends continuation of this rule. No other comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well. The rule also prescribes radiation safety requirements for persons using licensed materials in these operations. The rule is needed to meet the requirements of federal law relating to radiation control. There have not been any comments received that were in opposition to the rule.

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

ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at sgiddings@utah.gov

AUTHORIZED BY: Dane Finerfrock, Manager

EFFECTIVE: 12/10/2003

▼ ————— ▼

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

Agriculture and Food

Regulatory Services

No. 26690 (AMD): R70-310-4. Penalty.
Published: November 1, 2003
Effective: December 2, 2003

Commerce

Administration

No. 26695 (AMD): R151-33. Pete Suazo Utah Athletic Commission Act Rule.
Published: November 1, 2003
Effective: December 2, 2003

Community and Economic Development

Community Development

No. 26702 (AMD): R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.
Published: November 1, 2003
Effective: December 8, 2003

Environmental Quality

Radiation Control

No. 26701 (AMD): R313-19-50. Reporting Requirements.
Published: November 1, 2003
Effective: December 12, 2003

No. 26699 (AMD): R313-21. General Licenses.
Published: November 1, 2003
Effective: December 12, 2003

No. 26700 (AMD): R313-22. Specific Licenses.
Published: November 1, 2003
Effective: December 12, 2003

Health

Health Systems Improvement, Emergency Medical Services

No. 26669 (AMD): R426-13. Emergency Medical Services Provider Designations.

Published: October 15, 2003

Effective: January 1, 2004

No. 26670 (AMD): R426-14. Ambulance Service and Paramedic Service Licensure.

Published: October 15, 2003

Effective: January 1, 2004

No. 26671 (AMD): R426-15. Licensed and Designated Provider Operations.

Published: October 15, 2003

Effective: January 1, 2004

Natural Resources

Water Rights

No. 26683 (AMD): R655-10-4. Definitions.

Published: November 1, 2003

Effective: December 10, 2003

No. 26682 (AMD): R655-11. Requirements for the Design, Construction and Abandonment of Dams.

Published: November 1, 2003

Effective: December 10, 2003

No. 26686 (AMD): R655-11-6E. Internal Drainage.

Published: November 1, 2003

Effective: December 10, 2003

No. 26684 (AMD): R655-11-7C. Outlet Details.

Published: November 1, 2003

Effective: December 10, 2003

No. 26685 (AMD): R655-12-5A. Hydrologic Requirements.

Published: November 1, 2003

Effective: December 10, 2003

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 that are effective as of January 1, 2004. 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).

The complete index for 2003, listing all rulemaking actions made effective that year, will be published in the next issue of the *Bulletin*.

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
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
Environmental Quality					
<u>Drinking Water</u>					
R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	26760	AMD	01/01/2004	2003-22/19
Health					
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-13	Emergency Medical Services Provider Designations	26669	AMD	01/01/2004	2003-20/7

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R426-14	Ambulance Service and Paramedic Service Licensure	26670	AMD	01/01/2004	2003-20/10
R426-15	Licensed and Designated Provider Operations	26671	AMD	01/01/2004	2003-20/14

RULES INDEX - BY KEYWORD (SUBJECT)

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AMD = Amendment	NSC = Nonsubstantive rule change
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KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>building codes</u>					
Commerce, Occupational and Professional Licensing	26693	R156-56	AMD	01/01/2004	2003-21/7
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
<u>building inspection</u>					
Commerce, Occupational and Professional Licensing	26693	R156-56	AMD	01/01/2004	2003-21/7
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
<u>contractors</u>					
Commerce, Occupational and Professional Licensing	26693	R156-56	AMD	01/01/2004	2003-21/7
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
<u>emergency medical services</u>					
Health, Health Systems Improvement, Emergency Medical Services	26669	R426-13	AMD	01/01/2004	2003-20/7
	26670	R426-14	AMD	01/01/2004	2003-20/10
	26671	R426-15	AMD	01/01/2004	2003-20/14
<u>financial assistance</u>					
Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19
<u>licensing</u>					
Commerce, Occupational and Professional Licensing	26693	R156-56	AMD	01/01/2004	2003-21/7
	26692	R156-56-707	AMD	01/01/2004	2003-21/34
<u>loans</u>					
Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19
<u>SDWA</u>					
Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19