

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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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SPECIAL NOTICES

Governor's Executive Order 2004-0007: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, the danger from wildland fires is extremely high throughout the state of Utah;

WHEREAS, numerous wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment;

WHEREAS, some of the areas are extremely remote and inaccessible and the situation has the potential to worsen greatly if left unattended;

WHEREAS, immediate action is required to suppress these fires as they occur and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment; and

WHEREAS, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981;

NOW, THEREFORE, I, Olene S. Walker, Governor of the state of Utah by virtue of the power vested in me by the constitution and the laws of the state of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of August 10, 2004, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done in Salt Lake City, Utah, this 10th day of August, 2004.

(State Seal)

OLENE S. WALKER
Governor

ATTEST:

GAYLE F. MCKEACHNIE
Lieutenant Governor

2004/0007

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 August 3, 2004, 12:00 a.m., and August 16, 2004, 11:59 p.m. are included in this, the September 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 October 1, 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 December 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.

Commerce, Real Estate
R162-8
Prelicensing Education

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 27338
 FILED: 08/06/2004, 15:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division proposes to change the real estate prelicensing education certification to a two-year certification. Currently all real estate prelicensing school certifications expire on December 31 of the year in which they are issued, and instructor certifications expire on December 31 of the first full year following issuance.

SUMMARY OF THE RULE OR CHANGE: All certifications of real estate prelicensing schools and instructors will be valid for 24 months after issuance. The current one-year certification fees will be doubled so that the fee per year is the same.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--The period for which real estate prelicensing education schools and instructors are certified has no impact on the State budget, except that there will be a slight savings realized by the Division of Real Estate because it will be required to recertify prelicensing schools and instructors only every two years instead of every year.

❖ **LOCAL GOVERNMENTS:** None--The period for which real estate prelicensing schools and instructors are certified has no impact on local government.

❖ **OTHER PERSONS:** There will be no cost or savings to any other persons because of a change from a one-year to a two-year prelicensing education certification, except for the possible impact on the prelicensing schools and instructors. The schools may realize a savings because: 1) previously a school paid for a whole calendar year regardless of when in the year they applied for certification; and 2) there may be a slight savings realized by a school because it will only have to go through the process of recertifying every two years instead of every year. The course instructors may realize that same savings because they will only have to recertify once every two years instead of every year. There may be an increased cost to some instructor applicants on their initial certification because previously they paid for a one-year certification and received one full calendar year plus an additional period for free (the balance of the year in which they applied). Now they will pay for two years and receive two years of certification. However, this possible increased cost on initial certification should be offset in the long run by the savings in time from only having to go through the recertification process once every two years instead of every year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be an increased cost to some instructor applicants on their initial

certification because previously they paid for a one-year certification and received one full calendar year plus an additional period for free (the balance of the year in which they applied). Now they will pay for two years and receive two years of certification. However, this possible increased cost on initial certification should be offset in the long run by the savings in time from only having to go through the recertification process once every two years instead of every year.

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, which changes the certification period for education programs from one-year terms to two-year terms.

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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.
R162-8. Prelicensing Education.
R162-8-4. School Certification.

8.4 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. Until January 1, 2005, all certifications will be issued by the calendar year and will expire on December 31. Beginning on January 1, 2005, school certifications will be issued for a two-year period and will expire twenty-four months from the date of issuance. [All certifications expire December 31 of each year.] School certifications may be renewed by submitting a properly completed application for renewal prior to the expiration of the school's current certification, using the form required by the Division. Until January 1, 2005, the term of a renewed school certification shall be one calendar year. Beginning on January 1, 2005, the term of a renewed school certification shall be twenty-four months. Conditions of certification include the following:

8.4.1 A school shall teach the approved course of study as outlined in the State Approved Course Outline.

8.4.2 A school shall require each student to attend the required number of hours and pass a final examination. A school shall maintain

a record of each student's attendance for a minimum of five years after enrollment.

8.4.3 A school shall not accept a student for a reduced number of hours without first having a written statement from the Division which defines the exact number of hours the student needs.

8.4.4 A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the real estate profession. A school shall not make disparaging remarks about a competitor's services or methods of operation.

8.4.5 A school shall limit approved guest lecturers who are experts in related fields to a total of 20% of the instructional hours per approved course. A guest lecturer shall provide evidence of professional qualifications to the Division prior to being used as a guest lecturer.

8.4.6 Within 15 calendar days after the occurrence of any material change in the school which would affect its approval, the school shall give the Division written notice of that change.

8.4.7 A school shall not attempt by any means to obtain or use the questions on the precicensing examinations unless the questions have been dropped from the current exam bank.

8.4.8 A school shall not give any valuable consideration to a real estate brokerage for having referred students to the school. A school shall not accept valuable consideration from a brokerage for having referred students to the brokerage.

8.4.8.1 If the school agrees, real estate brokerages may be allowed to solicit for agents at the school. No solicitation may be made during the class time nor during the student break time. Solicitation may be made only after the regularly scheduled class so that no student will be obligated to stay for the solicitation.

8.4.9. A school shall use only certified instructors or guest lecturers who have been registered with the Division.

8.4.10 A school's owners and director shall be solely responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification.

8.4.10.1 A school director shall provide the instructor with the approved content outline for each course and shall assure the content has been taught.

R162-8-7. Instructor Certification Renewal.

8.7 Upon approval by the Division, an instructor applicant will be issued certification. All original instructor certifications expire twenty-four months after issuance.~~the following December 31 of the first full year following certification.~~

8.7.1 Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the instructor's current certification, using the form required by the Division. Renewed instructor ~~Subsequent~~ certifications will be issued for a twenty-four month period~~expire two years later on December 31~~. Conditions of renewal of certification include providing proof of the following:

8.7.1.1 Must have taught at least 20 hours of in-class instruction in a certified real estate course during the preceding two years;

8.7.1.2 Must have attended a real estate instructor development workshop sponsored by the Division during the preceding two years; and

8.7.1.3 Must have completed 12 hours of live education taken in a real estate related subject in addition to the 12 hours of continuing education required for license renewal, and will provide a written

evaluation of the course(s) and instructor(s) to the Division at time of renewal on a specific instructor evaluation form provided by the Division.

8.7.2 ~~If the renewal fee and documentation are not received within the prescribed time period~~If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire.

8.7.2.1 When a certification expires, the certification may be ~~renewed~~reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to the requirements of ~~[R162-8-7(8.7.1.1)–R162-8-7(8.7.1.3)]~~Section R162-8.7.1.1 through R162-8.7.1.3.

8.7.2.2 After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable fee and completion of 6 classroom hours of education related to real estate or teaching techniques in addition to the requirement of Sections R162-8.7.1.1 through R162-8.7.1.3.

8.7.2.~~[2]~~3 After the three month period~~of thirty days~~, those instructors and adjunct instructors not meeting the conditions for renewal of certification must apply as an original applicant.

KEY: real estate business

~~January 16, 2003~~2004

Notice of Continuation June 3, 2002

61-2-5.5

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27335

FILED: 08/06/2004, 09:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division proposes to change real estate continuing education certification to a two-year certification. Current practice has been to certify continuing education courses for a one-year period and instructors for a one-year period, unless the application for instructor certification is received after October 1 in which case the certification is for the balance of the calendar year plus one calendar year.

SUMMARY OF THE RULE OR CHANGE: All certifications of real estate continuing education courses and instructors will be valid for 24 months after issuance. The current one-year certification fee will be doubled so that the fee per year is the same.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The period for which continuing education courses for real estate brokers and agents and the

instructors of those courses are certified has no impact on the State budget, except that there will be a slight savings realized by the Division of Real Estate because it will be required to recertify courses and instructors every two years instead of every year.

❖ LOCAL GOVERNMENTS: None--The period for which continuing education courses for real estate brokers and agents and for the instructors of those courses are certified has no impact on local government.

❖ OTHER PERSONS: There will be no cost or savings to any other persons because of the change from a one-year course certification to a two-year course certification, except that a slight savings may be realized by the affected course instructors because they will only have to recertify their continuing education courses once every two years. Concerning the term of instructor certification, there will be no cost or savings to other persons, except that those few instructors who applied for certification for the first time after October 1 previously received the balance of the year's instructor certification for free, and after this rule change, post-October 1 applicants will not receive any period of certification for free. However, the loss of any period of free certification on the initial application should be at least partially offset by savings in the long run from only having to recertify every two years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those few instructors who applied for instructor certification for the first time after October 1 previously received the balance of the year's instructor certification for free, and after this rule change, post-October 1 applicants will not receive any period of certification for free. However, the loss of any period of free certification on the initial application should be at least partially offset by savings in the long run from only having to recertify every two years.

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, which changes the instructor and course certification period for continuing education courses from one-year terms to two-year terms.

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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-9. Continuing Education.

R162-9-4. Instructor Certification Criteria.

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

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

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

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

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

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

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

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

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

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

9.4.4 An original continuing education instructor certification shall expire twenty-four months after issuance. Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration of the instructor's current certification, using the form required by the Division. The term of a renewed instructor certification is twenty-four months.

9.4.4.1 If the instructor does not submit a properly completed renewal prior to the expiration date of the instructor's current certification, the certification shall expire. For a period of thirty days after the expiration of an instructor certification, the instructor may apply for reinstatement of the certification by complying with all of the requirements for a timely renewal and, in addition, paying a non-refundable late fee.

9.4.4.2 After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to real estate or teaching techniques in addition to complying with all of the requirements for a timely renewal.

9.4.4.3 After the certification has been expired for three months, an instructor may not reinstate an expired certification and must apply for a new certification following the same procedure as an original applicant for certification.

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

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

9.5.1 Until January 1, 2005, [F]the application shall include a non-refundable filing fee of \$35.00 and an instructor certification fee of \$15.00 per course per instructor. Beginning January 1, 2005, the application shall include a non-refundable course certification fee of \$70.00 and a non-refundable instructor certification fee of \$30.00 per course per instructor. Both fees [should]shall be made payable to the Division of Real Estate.

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

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

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

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

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

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

9.5.2.6 The date, time and locations of each course;

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

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

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

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

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

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

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

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

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

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

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

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

9.5.2.16 Signature of the course coordinator or director.

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

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

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

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

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

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

R162-9-6. Conditions to Certification.

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

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

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

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

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

9.6.4 Until January 1, 2005, [A]all course certifications shall be valid for one year after date of approval by the Division. Beginning January 1, 2005, all original course certifications and all renewed course certifications shall be issued with an expiration date of twenty-four months after approval by the Division.

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

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

9.6.5 Until January 1, 2005, [F]instructor certifications shall expire December 31 of each year. Until January 1, 2005, [F]instructors who certify for the first time by September 30 shall renew December 31 of that same year. Until January 1, 2005, [F]instructors who certify for the first time after October 1 shall renew December 31 of the following year. Beginning January 1, 2005, renewed instructor certifications shall be issued for a term of twenty-four months.

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

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

KEY: continuing education

~~May 21, 2003~~ 2004

Notice of Continuation June 26, 2002

61-2-5.5

▼ ————— ▼

Commerce, Real Estate R162-103 Appraisal Education Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27349

FILED: 08/16/2004, 10:59

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division proposes to change all appraisal education certification to a 24-month certification to achieve a more uniform process. Appraisal schools are currently certified for the balance of the calendar year regardless of the date of certification. Appraisal instructors are currently certified for a term that expires on January 1 of the next even-numbered year regardless of the date of certification.

SUMMARY OF THE RULE OR CHANGE: All appraisal school and appraisal instructor certifications will be valid for 24 months after issuance. Current one-year certification fees will be doubled so that the fee per year will remain the same.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--The period for which appraisal schools and instructors are certified has no impact on the State budget, except that there will be a slight savings realized by the Division of Real Estate because its processes will be more uniform and it will only be required to recertify appraisal schools every two years instead of every year.

❖ **LOCAL GOVERNMENTS:** None--The period for which appraisal schools and instructors are certified has no impact on local government.

❖ **OTHER PERSONS:** There will be no cost or savings to any other persons, except that a slight savings may be realized by the affected schools because they will only be required to go through the process of recertification every two years instead of every year. Concerning the term of instructor certification, there will be no cost or savings to other persons except that those few instructors who apply for certification for the first

time in the middle of a certification cycle previously paid for a two-year certification regardless of whether their certification was valid for a full two years or for a shorter period of time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any compliance costs for appraisal schools and instructors.

The schools should incur slightly smaller costs because they will not have to prepare and submit recertification paperwork every year. A first time instructor may actually incur a savings because the instructor will receive a full twenty-four months of certification instead of whatever balance of the two-year period remains at the point the instructor applies for certification.

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, which changes the certification period for appraisal schools and appraisal instructors from one-year terms to two-year terms.

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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-103. Appraisal Education Requirements.

R162-103-2. School Certification.

103.2.1 Each school requesting certification shall make application for approval on the form prescribed by the Division, and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the school's eligibility for certification:

103.2.1.1 Name, phone number, and address of the school, school director and all owners of the school.

103.2.1.2 Attestation to upstanding moral character by individuals who are school directors or owners of the school, and whether any individual:

(a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(c) has any action now pending by any appraiser licensing or other agency.

(d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.2.1.3 A description of the type of school and a description of the school's physical facilities. All courses shall be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

103.2.1.4 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; and the school's refund policy.

103.2.2 A public school may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or similar schedule. A quarter hour of college credit is the equivalent of 10 classroom hours, and a semester hour of college credit is the equivalent of 15 classroom hours.

103.2.3 Upon approval by the Board, a school will be issued certification. Until January 1, 2005, [A] all certifications expire January 1. Beginning on January 1, 2005, a school certification will be issued for a two-year term and will expire twenty-four months from the date of issuance. School certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the school's current certification, using the form required by the Division. Until January 1, 2005, renewed school certifications shall be issued for a term of one calendar year. Beginning on January 1, 2005, the term of a renewed school certification shall be twenty-four months. Conditions of certification include the following:

(a) A school shall teach the approved course of study as outlined in the State Approved Course Outline;

(b) A school shall require each student to attend the required number of hours and pass a final examination;

(c) A school shall maintain a record of each student's attendance for a minimum of five years after his enrollment;

(d) A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the appraisal profession. A school shall refrain from disparaging a competitor's services or methods of operation;

(e) Within 15 calendar days after the occurrence of any material change in the school which could affect its approval, including the events listed in R162-103.2.1.2, the school shall give the Division written notice of that change; and

(f) A school will not attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank.

(g) A school shall provide to all students at the time of registration a copy of the qualifying questionnaire the student will be required by the Division to answer as part of the prelicensing or precertification examination.

R162-103-3. Course Certification.

103.3.1 Each school requesting approval of a course designed to meet the education requirements of licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:

(a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;

(b) Indication of any method of instruction other than lecture method including: a slide presentation, cassette, video tape, movie, home study, or other.

(c) A copy of the three final examinations of the course and the answer keys which are used to determine if the student has passed the course;

(d) An explanation of what the school procedure is for maintaining the security of the final exams and the answer keys;

(e) A list of the titles, authors and publishers of all required textbooks;

(f) A list of the instructors and evidence of their certification by the Division, and a list of any guest lecturers to be used and evidence of their qualifications as an instructor for a specific course; and

(g) Days, times, and location of classes.

103.3.2 Upon approval by the Board, a course will be issued certification. Until January 1, 2005, [A] all certifications expire January 1. Beginning January 1, 2005, all original course certifications and all renewed course certifications shall be issued with an expiration date of twenty-four months after issuance.

103.3.3 Each course of study will meet the minimum standards set forth in the State Approved Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics. Specific nonappraisal courses being used to satisfy the educational requirements shall have prior approval as to their applicability.

103.3.4 All courses of study will meet the minimum hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period. A 10-minute break will be given for each 50 minutes in class. Registration or certification credit will be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.

103.3.5 A public school or institution may use any faculty member to teach an approved course provided the individual demonstrates to the satisfaction of the Division and the Board academic training or appraisal experience qualifying him to teach the course.

103.3.6 Distance education is defined as any educational process based on the geographical separation of instructor and student (e.g., CD ROM, On-line learning, correspondence courses, video conferencing, etc.). Distance education courses must provide interaction between the learner and instructor and must include testing. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent providing each course meets the following conditions:

103.3.6.1 The course (a) has been presented by an accredited college or university which offers distance education programs in other disciplines and where accreditation has been made by the Commission on Colleges or a regional accreditation association; or (b) has received approval for college credit by the International Distance Education

Certification Center, also known as IDECC; or (c) has been approved under the AQB Course Approval Program.

(a) The learner must successfully complete a written examination personally proctored by an official approved by the college or university or by the presenting entity; and

(b) The course must meet the requirements established by the AQB and be equivalent to the minimum of 15 classroom hours.

103.3.7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.

103.3.7.1 If a student fails a school final examination, he will not be allowed to retest for a minimum of three days. The student will not be allowed to retake the same final exam, but will be given a new exam with different questions.

103.3.7.2 If the student fails the final exam a second time, he will not be allowed to retest for a minimum of two weeks at which time he will be given an entirely new exam with completely new questions. If the student fails this third exam, he will fail the course.

103.3.8 All texts, workbooks, supplement pamphlets and any other materials shall be appropriate and current in their application to the required course outline.

103.3.9 Within 15 calendar days after the occurrence of any material change in a course which could affect approval, the school shall give the Division written notice of the change.

R162-103-5. Instructor Application for Certification.

103.5.1 Each instructor requesting approval to be certified as an instructor to teach the education requirements of appraisal licensure or certification shall make application for approval on a form prescribed by the Division and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the instructor's eligibility for approval:

103.5.1.1 Attestation to upstanding moral character, including whether the individual:

(a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(c) has any action now pending by any appraiser licensing or other agency.

(d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.5.2 The instructor will demonstrate evidence of knowledge of the subject matter by the following:

103.5.2.1 A minimum of five years active experience in appraising, or

103.5.2.2 Evidence of having completed college or other appropriate courses specific to the topic he proposes to teach, or

103.5.2.3 Evidence of other qualifications of experience, education, or credentials which are acceptable to the Board; and

103.5.2.4 Evidence of having passed an examination designed to test knowledge of the subject matter he proposes to teach.

103.5.3 An applicant to teach the course on USPAP shall conform to all of the above criteria and in addition shall have been certified by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation as an AQB-Certified USPAP instructor.

103.5.4 Upon approval by the Board, an applicant will be issued certification. Until January 1, 2005, [A]all certifications expire January 1 of each even numbered year. Beginning January 1, 2005, instructor certifications will be issued for a term that expires twenty-four months from the date of issuance. Conditions of renewal of certification include providing proof of the following:

103.5.4.1 Must have taught at least 20 hours of in-class instruction in a certified course during the preceding two years; and

103.5.4.2 Must have attended a real estate instructor development workshop sponsored or approved by the Division during the preceding two years.

103.5.4.3 Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the instructor's current certification, using the form required by the Division. Renewed instructor certifications will be issued for a term of twenty-four months. If the instructor does not submit a properly completed renewal form, renewal fee, and any required documentation prior to the expiration date of the current certification, the certification shall expire. When a certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a late fee in addition to completing the requirements for a timely renewal. After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and submission of proof of completion of six classroom hours of education related to real estate appraisal or teaching techniques in addition to completing the requirements for a timely renewal. Following the three month period, an instructor shall be required to apply as an original applicant in order to obtain a new certification.

103.5.5 Within 15 calendar days after the occurrence of any of the events listed in Section 103.5.1, an applicant or instructor shall give written notice to the Division of that event.

KEY: real estate appraisal, education

2004

Notice of Continuation June 3, 2002

61-2b-8

Commerce, Real Estate **R162-104** Experience Requirement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27350

FILED: 08/16/2004, 11:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The federal Appraisal Subcommittee has notified the Division of Real Estate that teaching experience is not an acceptable substitute for appraisal experience and that the rule allowing experience credit toward certification for teaching experience must therefore be changed.

SUMMARY OF THE RULE OR CHANGE: The provisions allowing experience points for teaching appraisal classes are deleted and the remaining provisions renumbered. Subsection R162-104-18(104.18.2)(ff) is moved so that the entire list does not have to be renumbered.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Whether or not appraiser candidates may gain part of their experience credit toward certification from teaching classes should neither cost nor save the State.
- ❖ LOCAL GOVERNMENTS: None--It is not anticipated that eliminating credit toward certification for teaching appraisal classes will have any impact on local government.
- ❖ OTHER PERSONS: The only persons who could be affected are any candidates for certification who would like to use teaching experience toward their certification requirements. However, it is unlikely that there are any such persons since instructors who teach appraiser classes generally have enough appraisal experience that they would qualify for certification on the basis of their experience alone and would not need extra experience points from instructing classes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Candidates for certification who would like to use teaching experience toward their certification requirements would be required to obtain their experience for certification in some other way. Although it is unlikely that there are any such persons since instructors of appraiser classes generally have enough appraisal experience that they would qualify for certification on the basis of their experience alone and would not need extra experience points from instructing classes, if there are any such persons they may be delayed in obtaining certification, which could impact their income.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule modifies the education requirements for licensure to comply with national standards, which do not recognize teaching experience as credit toward appraisal experience. 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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-104. Experience Requirement.

R162-104-8. ~~[Cumulative] Points from Authorship.~~

104.8 The cumulative points from ~~[instruction of appraisal classes and]~~ appraisal textbook and article authorship shall not exceed 50% of the cumulative points submitted.

R162-104-18. Appraisal Experience Points Schedule.

104.18 Points shall be awarded as follows:

104.18.1 Residential Experience Points Schedule. The following points shall be awarded to form appraisals. Three points may be added to the points shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, including a site	1 point
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	1 point per dwelling up to a maximum of 6 points
1-25 dwellings	A total of 10 points
Over 25 dwellings	4 points
(c) Two- to four-unit dwelling	2 points
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	1 point
(e) Residential lot, 1-4 family	1 point per lot up to a maximum of 6 points
(f) Multiple lots in the same subdivision which are substantially similar	A total of 10 points
1-25 lots	1 point
Over 25 lots	4 points
(g) Small parcel up to 5 acres	1 point
(h) Vacant land, 20-500 acres	4 points
A maximum of 50 points may be awarded for appraisal of vacant land.	
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	2 points
Over 10 acres	3 points
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	1-5 points as determined by the Board
(k) Residential appraisal textbook authorship, not to exceed 20 points per year	As determined by the Board
(l) Residential appraisal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points
[(m) Instructing an approved residential course of 20 classroom hours or more]	10 points]

104.18.2 General Experience Points Schedule. All appraisal reports claimed must be narrative appraisal reports.

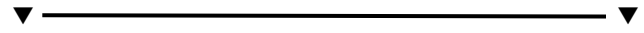
TABLE 2

(a) Apartment buildings, 5-100 units	8 points		
Over 100 units	10 points		
(b) Hotel or motels, 50 units or fewer	6 points		
51-150 units	8 points		
Over 150 units	10 points		
(c) Nursing home, rest home, care facilities,			
Fewer than 80 beds	8 points		
Over 80 beds	10 points		
(d) Industrial or warehouse building,			
Fewer than 20,000 square feet	6 points		
Over 20,000 square feet, single tenant	8 points		
Over 20,000 square feet, multiple tenants	10 points		
(e) Office buildings			
Fewer than 10,000 square feet	6 points		
Over 10,000 square feet, single tenant	8 points		
Over 10,000 square feet, multiple tenants	10 points		
(f) Entire condominium projects, using income			
approach to value			
5- to 30-unit project	6 points		
31- or more-unit project	10 points		
(g) Retail buildings			
Fewer than 10,000 square feet	6 points		
More than 10,000 square feet, single tenant	8 points		
More than 10,000 square feet, multiple tenants	10 points		
(h) Commercial, multi-family, industrial,			
or other nonresidential use acreage			
Fewer than 10 acres	4 points		
10 acres or more	6 points		
100 acres or more, income approach to value	10 points		
(i) All other unusual structures or assignments	1 to 20		
which are much larger or more complex than the	points as		
properties described in (a) to (h) herein.	determined		
	by Board		
[(j)] Instructing an approved general appraisal			
course of 20 classroom hours or more, not to			
exceed 20 points per year	10 points		
[(i)] Textbook authorship in general appraisal	As determined		
topics, not to exceed 20 points per year	by Board		
[(k)] General field journal articles in journals of			
approved national appraisal organizations,			
not to exceed 20 points per year	10 points		
[(l)] Entire Subdivisions or Planned Unit Developments (PUDs)			
1- to 25-unit subdivision or PUD	6 points		
Over 25-unit subdivision or PUD	10 points		
[(m)] Feasibility or market analysis,	1 to 20		
maximum 100 points	points as		
	determined		
	by Board		
Ad Valorem appraisals			
[(n)] Development and implementation of multiple			
regression model - land valuation guide, up to			
5000 parcels	20 points		
For each additional 5000 parcels, add 1 point			
[(o)] Depreciation study and analysis	20 points		
[(p)] Sales ratio study and implementation - physical			
inspection and review, maximum 50 points	10 points		
[(q)] Development of standards of practice for	10-20		
assessment administration and writing of those	points as		
guidelines, maximum 40 points	determined		
	by Board		
[(r)] State-assessed property - gravel pits,	1-20 points		
mines, utilities	as determined		
	by Board		
Farm and Ranch appraisals	Form	Narrative	
(s) Separate grazing privileges or permits	4 pts.	5 pts.	
(t) Irrigated cropland, pasture other than			
rangeland, 1 to 10 acres	2 pts.	3 pts.	
11-50 acres	2.5 pts.	4 pts.	
51-200 acres	3 pts.	5 pts.	
201-1000 acres	5 pts.	8 pts.	
More than 1000 acres	8 pts.	10 pts.	

(u) Dry farm, 1 to 1000 acres	3 pts.	5 pts.
More than 1000 acres	4 pts.	8 pts.
(v) Improvements on properties other than		
a rural residence, maximum 2 points:		
Dwelling	1 pt.	1 pt.
Sheds	0.5 pt.	0.5 pt.
(w) Cattle ranches		
0-200 head	3 pts.	4 pts.
201-500 head	5 pts.	6 pts.
501-1000 head	6 pts.	8 pts.
More than 1000 head	8 pts.	10 pts.
(x) Sheep ranches		
0-2000 head	5 pts.	6 pts.
More than 2000 head	7 pts.	9 pts.
(y) Dairies, includes all improvements		
except a dwelling		
1-100 head	4 pts.	5 pts.
101-300 head	5 pts.	6 pts.
More than 300 head	6 pts.	7 pts.
(z) Orchards		
5-50 acres	6 pts.	8 pts.
More than 50 acres	8 pts.	10 pts.
(aa) Rangeland/timber		
0-640 acres	4 pts.	5 pts.
More than 640 acres	6 pts.	7 pts.
(bb) Poultry		
0-100,000 birds	6 pts.	8 pts.
More than 100,000 birds	8 pts.	10 pts.
(cc) Mink		
0-5000 cages	6 pts.	7 pts.
More than 5000 cages	8 pts.	10 pts.
(dd) Fish farms	8 pts.	10 pts.
(ee) Hog farms	8 pts.	10 pts.
[(ff) Separate grazing privileges or permits	4 pts.	5 pts.]

104.18.2.1 Appraisals on commercial or multifamily form reports shall be worth 75% of the points normally awarded for the appraisal.

KEY: real estate appraisal, experience
~~[November 26, 2003]~~2004
 Notice of Continuation March 27, 2002
 61-2b-1 through 61-2b-40



Commerce, Real Estate
R162-205
 Residential Mortgage Unprofessional
 Conduct

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 27352
 FILED: 08/16/2004, 13:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule prohibit practices which could harm the public such as: 1) Division of Real Estate investigators have learned of instances in which mortgage brokers have acted as unlicensed real estate agents and filled out purchase agreements; and 2) the investigators have also learned of instances in which a property has not appraised high enough and the mortgage broker has falsified the figures on the

appraisal. By defining these acts as "unprofessional conduct", the Division will give mortgage brokers express notice that these acts are not permitted.

SUMMARY OF THE RULE OR CHANGE: "Unprofessional Conduct" by mortgage brokers will include filling out or altering any purchase agreements or altering any appraisal.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Defining "unprofessional conduct" by mortgage brokers to include additional acts has no impact on the State budget, except that it will make it easier for the Division of Real Estate to take disciplinary action against licensees who engage in these bad practices, and therefore, there may be a slight savings in enforcement costs.
- ❖ LOCAL GOVERNMENTS: None--The standards of conduct for mortgage brokers do not impact local government.
- ❖ OTHER PERSONS: None--Mortgage brokers are already prohibited by the real estate licensing law from acting as real estate agents and filling out purchase agreements. They are already prohibited by criminal statutes from falsifying documents. Adding these acts to the list of what is "unprofessional conduct" for mortgage broker therefore does not result in either costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Mortgage brokers should not currently be engaging in these practices for other reasons.

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, which codifies existing practice into the definition of "unprofessional conduct."

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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Dexter Bell, Director

R162. Commerce, Real Estate.

R162-205. Residential Mortgage Unprofessional Conduct.

R162-205-1. Residential Mortgage Unprofessional Conduct.

Unprofessional conduct includes the following acts:

- (a) conducting the business of residential mortgage lending under any name other than a name under which the entity or individual conducting such business is licensed with the Division;
- (b) [F]failing to remit to the appropriate third parties appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower;
- (c) [E]charging for services not actually performed; [and]
- (d) [E]charging a borrower more for third party services than the actual cost of those services[-];
- (e) filling out or altering any Real Estate Purchase Contract or other contract for the sale of real property, or any addenda thereto; and
- (f) making any alteration to any appraisal of real property.

KEY: residential mortgage loan origination

[April 12,]2004

61-2c-301(1)(i)



Environmental Quality, Air Quality R307-110-12

Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27343

FILED: 08/11/2004, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose is to demonstrate that carbon monoxide levels will not exceed the federal health standard in Ogden through 2021 and to specify a new Mobile Source Emissions Budget to be used for transportation conformity purposes (see separate filing on Section R307-110-35). (DAR NOTE: The proposed amendment to Section R307-110-35 is under DAR No. 27344 in this issue.)

SUMMARY OF THE RULE OR CHANGE: In Section R307-110-12, the change amends the date of adoption by the Air Quality Board to reflect the latest amendments to the State Implementation Plan for Carbon Monoxide. In the Plan, the change replaces the existing Section IX.C.8 with the updated plan demonstrating continued attainment of the health standard for carbon monoxide in Ogden through 2021. New Motor Vehicle Emissions Budgets are established for 2005 and 2021 for conformity purposes, and other budgets in the existing Plan are deleted. The demonstration shows that vehicles six years old and newer can have their emissions tested every other year instead of annually without any risk of exceeding the federal health standard for carbon monoxide (see separate filing on R307-110-35 in this issue).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(2)(e), and the Clean Air Act, Section 211(m) (42 U.S.C. 7545(m))

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: State Implementation Plan Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None of the control measures in the Plan are changed, and thus there is no impact on the State budget.

❖ LOCAL GOVERNMENTS: This change will have no effect on any local government, as there is no change in control measures.

❖ OTHER PERSONS: There is no change in costs for any affected person, as there is no change in the control measures required in the Plan. Carbon monoxide levels are dropping rapidly as cleaner cars replace older vehicles.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change in costs for any affected person, as there is no change in the control measures required in the Plan. Carbon monoxide levels are dropping rapidly as cleaner cars replace older vehicles.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: More stringent federal emission controls on vehicles have reduced emissions of carbon monoxide to the point that computer modeling can demonstrate that Ogden will comply with carbon monoxide standards through 2021. There is no change in costs for any affected business or individual.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile or Jan Miller at the above address, by phone at 801-536-4136 or 801-536-4042, by FAX at 801-536-0085 or 801-536-4099, or by Internet E-mail at MCARLILE@utah.gov or janmiller@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 10/01/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 9/22/2004 at 1:30 PM, Weber Morgan Health Department, 2570 Grant Avenue, Room 51, Ogden, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/04/2004

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan. R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on [October 6]November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program, particulate matter, ozone

2004

Notice of Continuation March 27, 2002

19-2-104(3)(e)



Environmental Quality, Air Quality
R307-110-35
Section X, Vehicle Inspection and
Maintenance Program, Part E, Weber
County

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27344

FILED: 08/11/2004, 15:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to incorporate the changes in Section 41-6-163.7 of the Utah Code into the State Implementation Plan X.E, which is incorporated by reference under Section R307-110-35.

SUMMARY OF THE RULE OR CHANGE: This change amends Section R307-110-35 by changing the date of last adoption by the Air Quality Board to November 3, 2004. In the State Implementation Plan, X.E, which is incorporated by reference under Section R307-110-35, the change adds language to specify that vehicles six years old and newer must be inspected only every other year, as per changes in Section 41-5-163.7.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(2)(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The vehicle inspection and maintenance program is operated by Weber County, not the state; therefore, this change does not affect the state budget.
- ❖ LOCAL GOVERNMENTS: This change will not affect the budget of Weber County, because the costs to administer the inspection and maintenance programs are covered by the County's share of the fees paid by vehicle owners.
- ❖ OTHER PERSONS: Of the total 150,556 vehicles registered in Weber County, approximately 76,485 vehicles are six years old or newer. Theoretically, owners of vehicles that are six years old or newer and are registered in Weber County may save the cost of vehicle emissions inspection every other year. There is no evidence that any inspection stations have been driven out of business by the reduction in the number of inspections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Of the total 150,556 vehicles registered in Weber County, approximately 76,485 vehicles are six years old or newer. Theoretically, owners of vehicles that are six years old or newer and are registered in Weber County may save the cost of vehicle emissions inspection every other year. There is no evidence that any inspection stations have been driven out of business by the reduction in the number of inspections.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses in Weber County that own vehicles six years old and newer will be able to save in inspection costs by inspecting every other year instead of annually.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile or Jan Miller at the above address, by phone at 801-536-4136 or 801-536-4042, by FAX at 801-536-0085 or 801-536-4099, or by Internet E-mail at MCARLILE@utah.gov or janmiller@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 10/01/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 9/22/2004 at 1:30 PM, Weber-Morgan Health Department, 2570 Grant Avenue, Room 51, Ogden, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/04/2004

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan. R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on ~~February 5, 1997~~ November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, small business assistance program, particulate matter, ozone

**2004
Notice of Continuation March 27, 2002
19-2-104(3)(e)**

▼ ————— ▼

Insurance, Administration **R590-102** Insurance Department Fee Payment Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27345

FILED: 08/11/2004, 16:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is being proposed to adopt changes in the department's fees made by the Appropriations bill, S.B. 1 that was passed in 2004 legislative session. (DAR NOTE: S.B. 1 is found at UT L 2004 Ch 256, and was effective 07/01/2004.)

SUMMARY OF THE RULE OR CHANGE: Section R590-102-4 has nonsubstantive changes in terminology. Subsection R590-102-5(3)(b) deletes the workers' compensation loss cost schedule from inclusion in the annual service fee. Changes to Section R590-102-7 are for clarification purposes only and are nonsubstantive. The change in Section R590-102-9 increases the length of time a license is considered lapsed from 31 through 365 days to 730 days. The change in Section R590-102-10 has moved the title fee for rates, forms, and reports to Section R590-102-15. The change in Section R590-102-11 replaces the term "approval fee" with "license fee." Section R590-102-12 now includes an additional nonelectronic processing fee of \$25 for paper applications. The change in Section R590-102-13 eliminates the \$27 fee for the insurance codebook which the department no longer publishes and sells. Section R590-102-14 changes the captive insurer fee from \$75 to \$1,000 annually. The nonelectronic fee has been moved to Section R590-102-12. The change in Section R590-102-15 moved the title agency filing fee to Section R590-102-10 and has added a new fee of \$35 assessed to licensees that do not report changes of address to the department.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-3-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to the department's fee rule, as noted in The Summary of the Rule Change above, and as follows, will create an increased revenue of \$38,348 to the General Fund. This is the result of the following projections for the coming year: 2 captive insurers requesting a new or renewal license for an additional cost of \$925 for 1 license and \$1,850 for 2; an increase in the paper application fee of \$20 x 300 applications per year = \$6,000; the workers' compensation fee of \$5 x 50 per year = \$250; the fee of \$35 for 1,000 address corrections a year = \$35,000; and the deletion of the codebook fee of \$27 plus mailing costs = loss of \$4,752 to the General Fund. The department will not need to hire or let any employees go as a result of these changes.

❖ LOCAL GOVERNMENTS: This will have no effect on the local government since the fees in this rule are related to business dealings with the Insurance Department only.

❖ OTHER PERSONS: Captive insurers wanting to do business in Utah will be required to pay a new or renewal e-commerce fee of \$1,000 annually. This is an increase of \$925 over the current \$75 annual fee. Anyone requesting a workers' compensation loss cost report will need to pay \$5. Currently, service is included in the insurer's annual service fee. Currently, there is no fee for an address change. This change will require the licensee to pay \$35 to have his address changed. It is estimated that 1,000 requests for address change will be received by the department creating revenue of \$35,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Captive insurers wanting to do business in Utah will be required to pay a new or renewal e-commerce fee of \$1,000 annually. This is an increase of \$925 over the current \$75 annual fee. Anyone requesting a workers' compensation loss cost report will need to pay \$5. Currently service is included in the insurer's annual service fee. Currently there is no fee for an address change. This change will require the licensee to pay \$35 to have his address changed. It is estimated that 1,000 requests for address change will be received by the department creating revenue of \$35,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The effects of these changes on Utah business will be minimal for the most part. For approximately 1,000 insurance agents who forget to give the insurance department their change of address information, they will be required to pay a \$35 fine and the 1 - 3 captive insurers who want to renew their Certificate of Authority will be required to pay an additional \$925.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-102. Insurance Department Fee Payment Rule.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through 14, shall be due when service is requested, if applicable, otherwise by the due date on the invoice. A non-electronic payment fee will be added to the fee due the department when a payment that can be made electronically is done through a non-electronic method.

(2) Payment.

(a) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken ~~[pursuant to the fee]~~ based on the payment will be ~~[negated]~~ voided. ~~[Any late]~~ Late fees ~~[or]~~ and other penalties, resulting from the voided action will apply until proper payment is made. ~~[Tender of a check to the department, that is subsequently dishonored.]~~ A check payment that is dishonored is a violation of this rule.

(b) Cash payments. The department is not responsible for un-receipted cash that is lost or misdelivered.

(c) Electronic payments.

(i) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties resulting from the voided action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) Implementation date.

(a) All fees, except resident and non-resident individual and agency license renewal fees, are implemented November 1, 2003.

(b) Resident and non-resident individual and agency license renewal fees are implemented December 1, 2003.

(6) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See Section 12 for non-electronic processing fees.

R590-102-5. Admitted Insurer Annual License and Annual Service Fees.

(1) Annual license fees.

(a) certificate of authority, initial license application - due with license application: \$1,002;

(b) certificate of authority - renewal - due by the due date on the invoice: \$302;

(c) certificate of authority - reinstatement - due with application for reinstatement: \$1,002;

(d) certificate of authority - amendments - due with request for amendment: \$252;

(e) application for merger, acquisition, or change of control - Form A, due with filing: \$2,002. Expenses incurred for consultant(s) services necessary to evaluate the Form A will be charged to the applicant and due when billed;

(f) redomestication filing - due with filing: \$2,002; and

(g) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: \$1,002.

(2) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(3) Annual service fee:

(a) Due annually by the due date on the invoice. The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the 200[3]4 annual service fee calculation will use the Utah premium shown in the December 31, 200[2]3 annual statement.

(i) \$0 premium volume: no service fee;

(ii) more than \$zero but less than \$1 million in premium volume: \$700;

(iii) \$1 million but less than \$3 million in premium volume: \$1,100;

(iv) \$3 million but less than \$6 million in premium volume: \$1,550;

(v) \$6 million but less than \$11 million in premium volume: \$2,100;

(vi) \$11 million but less than \$15 million in premium volume: \$2,750;

(vii) \$15 million but less than \$20 million in premium volume: \$3,500; and

(viii) \$20 million or more in premium volume: \$4,350.

(b) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) filing of producer/agency appointment with an insurer - biennial renewal;

(ix) report filing, all lines of insurance;

(x) rate filing, all lines of insurance; and

(xi) form filing, all lines of insurance; ~~and~~

~~(xii) workers' compensation loss cost schedule].~~

(c) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

R590-102-7. Captive Insurer Fees.

(1) Initial license application - due with license application: \$202.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: \$302;

(b) renewal - due by the due date on the invoice: \$302; and

(c) reinstatement - due with application for reinstatement: \$302.

(4) Annual service fee - due by the due date on the invoice: \$200.

R590-102-9. Individual Resident and Non-Resident Biennial License Fees.

(1) Resident and non-resident full-line individual initial license or renewal fee for two-year period:

(a) initial license fee - due with application: \$72;

(b) express initial license fee - due with application: \$72;

(c) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$72;

(d) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$142; and

(e) lapsed license reinstatement fee if reinstated 31 days through [365]730 days after renewal deadline - due with application for reinstatement: \$192.

(2) Resident and non-resident limited-line individual initial or renewal license fee, for two-year period:

(a) initial license fee - due with application: \$47;

(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$47;

(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$92; and

(d) lapsed license reinstatement fee if reinstated 31 days through [365]730 days after renewal deadline - due with application for reinstatement: \$142.

(3) Fee for addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$27.

(4) The initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) individual continuing education services; and
- (e) other services provided to the licensee.

(5) The initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

R590-102-10. Biennial Agency License Fees.

(1) Resident and non-resident agency initial or renewal license per two-year license period for a full-line agency and for a limited-line agency:

- (a) initial license fee - due with application: \$77;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$77;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$152; and
- (d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$202.

(2) Fee for addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: \$27.

(3) Bail bond agency per annual license period:

- (a) initial license fee - due with application: \$252;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$252;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$502; and
- (d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: \$602.

(4) Health insurance purchasing alliance annual license:

- (a) initial license fee - due with application: \$502;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$502;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$752; and
- (d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: \$802.

(5) The initial and renewal agency license fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) filing of producer designation to agency license - initial;
- (e) filing of producer designation to agency license - termination;
- (f) filing of producer designation to agency license - biennial renewal;
- (g) filing of amendment to agency license;
- (h) filing of power of attorney; and
- (i) any other services provided to the licensee.

(6) The initial and renewal agency license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(7) Title agency filing (rate, form, or report) - due with filing: \$25.

R590-102-11. Continuing Education Fees.

- (1) Continuing education provider ~~[approval]~~license fees:
 - (a) initial ~~[approval]~~license fee - due with application: \$252;
 - (b) renewal ~~[approval]~~license fee if renewed prior to renewal deadline - due with renewal application: \$252;
 - (c) renewal ~~[approval]~~license fee if renewed 1 through 60-days after renewal deadline and prior to ~~[approval]~~license lapse - due with renewal application: \$302; and
 - (d) Lapsed ~~[approval]~~license reinstatement fee if reinstated 61 days after renewal deadline - due with application for reinstatement: \$352.

(2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee \$27.

R590-102-12. Non-electronic Processing Fees.

~~[Non-electronic producer and agency appointment filing - initial or termination - due with each paper filing: \$5-]~~(1) Paper filing processing fee - assessed on a non-electronic filing when the department has mandated the use of an electronic filing process - due with each paper filing or by the due date on the invoice: \$5.

(2) Paper application processing fee - assessed on a non-electronic application when the department has mandated the use of an electronic application process - due with each paper application or by the due date on the invoice: \$25.

R590-102-13. Dedicated Fees.

The following are fees dedicated to specific uses:

- (1) annual fraud assessment fee - due by the due date on the invoice;
- (2) annual title assessment fee - due by the due date on the invoice;
- (3) relative value study book fee - due when book purchased or by invoice due date: 12;[
~~—(4) Utah insurance codebook fee - due when book purchased or by invoice due date: \$27;]~~ and
- ~~([5]4)~~ mailing fee for books - due if book is to be mailed to purchaser: \$3.

R590-102-14. Electronic Commerce Dedicated Fees.

- (1) E-commerce and internet technology services fee:
 - (a) admitted insurer~~[-captive insurer,]~~ and surplus lines insurer - due with the annual initial, annual renewal, or reinstatement application: \$75;
 - (b) captive insurer - due with the annual initial, annual renewal, or reinstatement application: \$1,000;
 - ~~(c)~~ other organization and viatical settlement provider - due with the annual initial, annual renewal, or reinstatement application: \$50;
 - ~~([e]d)~~ continuing education provider - due with the annual initial, annual renewal, or reinstatement application: \$20;
 - ~~([e]e)~~ agency - due with the biennial initial, biennial renewal, or reinstatement application: \$10; and
 - ~~([e]f)~~ individual - due with the biennial initial, biennial renewal, or reinstatement application: \$5.
- (2) The e-commerce and internet technology services fees are authorized until July 1, 2006.
- (3) Database access fee - due when the department's database is accessed to input or acquire data: \$3 per transaction.[

~~—(4) Non-electronic payment fee added to fees due the department when a payment that can be made electronically is done through some other method: \$5 per payment.]~~

R590-102-15. Other Fees.

- (1) photocopy fee - per page: \$.50.
- (2) Complete annual statement copy fee - per statement: \$42.
- (3) Fee for accepting service of legal process: \$12.
- (4) Fees for production of information lists regarding admitted insurers, other organizations, individuals, agencies, or other information that can be produced by list:
 - (a) printed list: \$1 per page;
 - (b) electronic list:
 - (i) 1 to 500 records: \$52; and
 - (ii) 501 or more records: \$.11 per record.
 - (5) Returned check fee: \$20.
 - (6) Workers compensation loss cost multiplier schedule: \$5.
 - (7) ~~[Title agency filing (rate, form, or report) due with filing: \$25]~~ Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: \$35.

KEY: insurance
[January 8,] 2004
Notice of Continuation February 21, 2002
31A-3-103



Judicial Conduct Commission,
 Administration
R595-1
 General Provisions

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE No.: 27330
 FILED: 08/04/2004, 14:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is proposed after comprehensive revision of the rule pursuant to division review, recent legislative changes (S.B. 161 (2004)), the Supreme Court's opinion, In re Anderson, and Legislative Audit 2003-10. (DAR NOTE: S. B. 161 is found at UT L 2004 Ch 293, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The changes involve repealing the current rule and replacing it with four new rules. This proposed new rule adopts general provisions for operation of Judicial Conduct Commission. (DAR NOTE: The proposed repeal of Rule R595-1 in under DAR No. 27329, and the proposed new rules are R595-1 under DAR No. 27330, R595-2 under DAR No. 27331, R595-3 under DAR No. 27332, and R595-4 under DAR No. 27333 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-8-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: None.

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to the State.
- ❖ LOCAL GOVERNMENTS: None--Judicial Conduct Commission operations do not affect local governments, therefore, there are no costs or savings.
- ❖ OTHER PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Judicial Conduct Commission operations do not affect businesses.

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

JUDICIAL CONDUCT COMMISSION
 ADMINISTRATION
 Room 104
 645 S 200 E
 SALT LAKE CITY UT 84111-3837, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Colin Winchester at the above address, by phone at 801-533-3200, by FAX at 801-533-3208, or by Internet E-mail at colin.winchester@utahbar.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.
R595-1. General Provisions.
R595-1-1. Definitions.

In addition to terms defined in Section 78-8-101 et seq. of the Utah Code:

A. "Chair" means the chair of the Judicial Conduct Commission and includes the vice chair or acting chair.

B. "Confidential hearing" means a hearing at which allegations of misconduct or disability are presented to the hearing panel or masters for resolution.

C. "Contract investigator" means a person with whom a contract exists for the performance of investigative services.

D. "Examiner" means the lawyer designated by the Commission to present evidence at a confidential hearing.

E. "Formal charges" means the specific allegations of misconduct or disability identified by the Commission at the conclusion of a full investigation and upon which further proceedings will be conducted.

F. "Formal complaint" means the written document that formally charges a judge with misconduct or disability.

G. "Full investigation" means that portion of an investigation in which the judge is invited to respond in writing to specific allegations identified by the Commission. A full investigation may also include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff, the judge and other witnesses; and inspection of physical facilities or objects.

H. "Hearing panel" means a panel of at least six members of the Commission designated to conduct a confidential hearing.

I. "Masters" means the special masters appointed by the Commission to conduct a confidential hearing.

J. "Misconduct" means a violation of the Utah Code of Judicial Conduct or Section 78-8-103(a), (b), (c), or (e) of the Utah Code.

K. "Preliminary investigation" means that portion of an investigation conducted upon receipt of a written complaint or upon authorization of the Commission. A preliminary investigation may include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff and other witnesses; and inspection of physical facilities or objects.

L. "Presiding master" means the special master designated to preside over any hearing conducted by masters.

M. "Proceeding" means all steps in the Commission's discipline and disability process.

N. "Record" means all documents required by statute to be submitted to the Utah Supreme Court.

O. "Supreme Court" means the Utah Supreme Court.

R595-1-2. Jurisdiction.

A. Judges. The Commission has jurisdiction over judges in evaluating allegations that misconduct occurred before or during service as a judge and in evaluating allegations of disability during service as a judge.

B. Former judges. The Commission has continuing jurisdiction over former judges regarding allegations that misconduct occurred during the judicial appointment process or during service as a judge if a complaint is received before the judge left office.

R595-1-3. Confidentiality.

Confidentiality of Commission proceedings and records is governed by the Constitution of Utah and applicable state statute.

R595-1-4. Ex Parte Communications.

Commissioners shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or judges.

R595-1-5. Attendance at Commission Meetings.

Commission members may attend Commission meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

R595-1-6. Records Classification and Retention.

(Reserved.)

KEY: judicial conduct commission
2004

Art. VIII, Sec. 13

78-8-101 through 78-8-108



Judicial Conduct Commission, Administration **R595-1** Rules of Procedure

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 27329

FILED: 08/04/2004, 14:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is proposed after comprehensive revision of the rule pursuant to division review, recent legislative changes (S.B. 161 (2004)), the Supreme Court's opinion, In re Anderson, and Legislative Audit 2003-10. (DAR NOTE: S. B. 161 is found at UT L 2004 Ch 293, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The changes involve repealing the current rule and replacing it with four new rules. This rule is repealed in its entirety. (DAR NOTE: The proposed repeal of Rule R595-1 in under DAR No. 27329, and the proposed new rules are R595-1 under DAR No. 27330, R595-2 under DAR No. 27331, R595-3 under DAR No. 27332, and R595-4 under DAR No. 27333 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-8-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: None.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore does not result in either cost or savings to the State.

❖ LOCAL GOVERNMENTS: None--Judicial Conduct Commission operations do not affect local governments and therefore, there are no costs or savings.

❖ OTHER PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Judicial Conduct Commission operations do not affect businesses.

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

JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
Room 104
645 S 200 E
SALT LAKE CITY UT 84111-3837, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Colin Winchester at the above address, by phone at 801-533-3200, by FAX at 801-533-3208, or by Internet E-mail at colin.winchester@utahbar.org

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THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.

[R595-1. Rules of Procedure.

R595-1-1. Definitions.

— In addition to terms defined in Section 78-8-101 et seq. of the Utah Code:

— A. "Chair" means the chair of the Judicial Conduct Commission and includes the vice chair or acting chair.

— B. "Examiner" means the lawyer designated by the Commission to gather and present evidence before the masters or hearing panel on formal charges against a judge.

— C. "Formal Charges" means the document that formally charges the judge with misconduct or disability.

— D. "Hearing" means the proceeding at which the issues of law and fact raised by the formal charges and answer are tried.

— E. "Hearing Panel" means a panel of at least a quorum of the Commission designated to conduct a hearing on formal charges.

— F. "Investigation" means an inquiry into allegations of misconduct, including a search for and examination of evidence concerning the allegations, divided into two stages: (1) a preliminary investigation conducted by the executive director after the receipt of a complaint; and (2) a full investigation in which the judge is asked to respond to specific allegations.

— G. "Masters" means the special masters appointed by the Commission to conduct a hearing on formal charges.

— H. "Misconduct" means a violation of the Utah Code of Judicial Conduct and Section 78-8-103(a), (b), (c), or (e) of the Utah Code. Disability is not misconduct.

— I. "Presiding Master" means the special master designated to preside over a hearing conducted by masters.

— J. "Proceeding" means all steps in the Commission's discipline and disability process.

— K. "Reasonable Cause" means a reasonable ground for belief in the existence of facts that support a finding of judicial misconduct or disability.

— L. "Record" means all documents required to be submitted to the Utah Supreme Court under *In re Richard Worthen*, 926 P.2d 853 (Utah 1996).

— M. "Respondent" means a judge or former judge against whom formal charges have been filed.

— N. "Supreme Court" means the Utah Supreme Court.

R595-1-2. Jurisdiction.

— A. Judges. Pursuant to Section 78-8-101 et seq. of the Utah Code, the Commission has jurisdiction over judges in evaluating allegations that misconduct occurred before or during service as a judge and in evaluating allegations of disability during service as a judge.

— B. Former judges. Pursuant to Section 78-8-101 et seq. of the Utah Code, the Commission has continuing jurisdiction over former judges regarding allegations that misconduct occurred before or during service as a judge if a complaint is made before the judge left office.

R595-1-3. Executive Director.

— Powers and Duties. The executive director shall have the authority and duty to:

— 1. Receive and review complaints, refer complaints to the Chief Justice of the Utah Supreme Court in accordance with Section 78-8-104 of the Utah Code, the Utah State Bar pursuant to Section 78-8-105 of the Utah Code, and the local prosecuting attorney having jurisdiction as provided by Subsections 78-8-107(1)(b) and (2) of the Utah Code, conduct preliminary investigations, recommend full investigations, notify complainants about the status and disposition of their complaints, make recommendations to the Commission on the disposition of complaints after investigation, file formal charges when directed to do so by the Commission, and act as examiner in prosecuting formal charges;

— 2. Maintain permanent records of the operations of Commission's office, including receipt of complaints, screening, investigation, and filing of formal charges in judicial discipline and disability matters, subject to the requirements of Rule 16;

— 3. Compile statistics to aid in the administration of the system, including a log of all complaints received, investigative files, and statistical summaries of docket processing and case dispositions;

— 4. Prepare the Commission's budget for submission to the Commission and legislature, and administer the funds;

— 5. Supervise other members of the Commission's staff;

— 6. With the Commission's approval, engage experts in connection with proceedings; and

— 7. Perform other duties at the direction of the Commission.

R595-1-4. Proof.

— Pursuant to *In re Worthen*, 926 P.2d 853 (Utah 1996), charges of misconduct and disability shall be established by a preponderance of the evidence.

R595-1-5. Evidence Rules Applicable.

— Except as otherwise provided in these rules, the Utah Rules of Evidence apply in all proceedings.

R595-1-6. Right to Counsel.

— An accused judge shall be entitled to retain and have the assistance of counsel at every stage of Commission proceedings.

R595-1-7. Confidentiality.

— A. All papers filed with, and proceedings before the Commission or before the masters appointed by the Commission, shall not be disclosed except in accordance with Subsections 78-8-107(9)(c)(iii) and (d), U.C.A.

— B. Information.

— 1. All information relating to a complaint that has not been dismissed shall be held confidential by the Commission and its staff, except that the Commission may disclose information:

— a. When the Commission has determined that there is a need to notify a government agency in order to protect the public or the administration of justice; or

— b. Upon waiver in writing by the judge.

— 2. All information relating to a complaint that has been dismissed without formal charges being filed shall be held confidential by the Commission and its staff.

— 3. The examiner's work product and records of the Commission's deliberations shall not be disclosed.

R595-1-8. Service.

— Service of formal charges in any disciplinary or disability proceeding shall be made by personal service upon the judge or judge's counsel or by registered or certified mail. Delivery of all other papers or notices shall be made by regular mail with the envelope marked "confidential."

R595-1-9. Subpoena Power.

— A. Oaths. In accordance with the provisions of Section 78-8-1(2) of the Utah Code, oaths may be administered by any member of the Commission, the executive director in matters under investigation, or any other person authorized by law.

— B. Subpoenas for Investigation. The Commission may compel by subpoena the attendance of the judge or witnesses and the production of pertinent books, papers, and documents for purposes of investigation.

— C. Enforcement of Subpoenas. A subpoena issued by the Commission shall have the same authority as an order of the district court.

— D. Issuance of Subpoenas. Commission subpoenas shall be issued and served in the same manner and form prescribed for subpoenas by the Utah Rules of Civil Procedure.

— E. Quashing Subpoena. Any attack on the validity of a subpoena shall be heard and determined by the district court in which enforcement of the subpoena is being sought. Any resulting order is not appealable prior to entry of a final order in the proceeding.

— F. Witnesses and Fees. Subpoena fees and costs shall be the same as those provided for in the Utah Rules of Civil Procedure.

R595-1-10. Notification to Complainant.

— The executive director shall provide written acknowledgment of every complaint, if the complainant is known, and notify the complainant in writing of the final disposition of a proceeding.

R595-1-11. Review and Investigation.

— A. Review. The executive director shall evaluate all information coming to the Commission's attention alleging judicial misconduct or disability by complaint. Regardless of whether the information would constitute misconduct or disability if true, the executive director shall conduct a preliminary investigation.

— B. Preliminary Investigation.

— 1. As directed by the Commission, the executive director and the Commission's investigators may conduct interviews and examine evidence to determine whether grounds exist to believe the allegations of complaints.

— 2. When there is credible evidence supporting the allegations against a judge, the executive director shall recommend a full investigation. The executive director may recommend a full investigation when there are grounds to believe that evidence supporting the allegations could be obtained by subpoena or further investigation. In all other cases, the executive director shall recommend that the matter be dismissed.

— C. Full Investigation.

— 1. Within ten (10) days after a full investigation is authorized, the executive director shall give the following notice to the judge:

— a. A specific statement of the allegations being investigated and the canons of the Code of Judicial Conduct allegedly violated, with the provision that the investigation can be expanded if appropriate;

— b. The judge's opportunity to respond; and

— c. The name of the complainant, unless the Commission determines there is good cause to withhold the name.

— 2. The executive director shall request that the judge file a written response within fifteen (15) days after service of the notice.

— 3. The chair of the Commission is authorized to issue subpoenas once a full investigation has been approved.

— 4. The executive director shall direct all investigations. If the executive director enters a disqualification, or if other circumstances arise justifying the executive director's disqualification, the Commission shall appoint another person to direct an investigation as provided by with Section 78-8-102(8) of the Utah Code.

— D. Disposition After Full Investigation.

— 1. Upon the conclusion of a full investigation, the executive director shall recommend to the Commission one or more of the following:

— a. Dismissal;

— b. Informal order of reprimand;

— c. The filing of formal charges for misconduct or disability;

— 2. The Commission shall adopt, reject, or modify the recommendations of the executive director. If the Commission finds reasonable cause to believe the judge committed misconduct, it shall take such action as is authorized by statute.

R595-1-12. Use of Allegations from Dismissed Cases.

— If additional information becomes known to the executive director regarding a complaint that has been dismissed before the filing of formal charges, the Commission may authorize reinvestigation of the allegations.

R595-1-13. Formal Charges.

— The formal charges shall give fair and adequate notice of the nature of the alleged misconduct or disability. The executive director shall file the formal charges with the Commission, cause a copy to be served upon the respondent or respondent's counsel, and file proof of service with the Commission.

R595-1-14. Pre-Hearing Procedures.

—A. Answer. Within 15 days after service, the respondent may file an answer to the formal charges.

—B. Witnesses and Exhibits. Before the hearing commences, the Commission and the respondent shall enter into a stipulation identifying uncontroverted facts, contested issues of fact, contested issues of law, witnesses, and exhibits. Not later than 15 days before the hearing, the examiner and respondent shall exchange all documents identified as proposed exhibits.

—C. Exculpatory Evidence. The examiner shall provide respondent with exculpatory evidence relevant to the formal charges.

—D. Duty of Supplementation. Both parties have a continuing duty to supplement information required to be exchanged under this rule.

—E. Failure to Disclose. The hearing panel may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness's name and address, any statements taken from the witness, or summaries of any interviews with the witness.

—F. Civil Rules Not Applicable. Except for the issuance and service of subpoenas as prescribed by Section 78-8-108 of the Utah Code, the Utah Rules of Civil Procedure do not apply to judicial conduct proceedings.

R595-1-15. Discipline by Consent.

—A. At any time after the filing of formal charges and before final disposition, the respondent may agree with the examiner that the respondent shall admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the Commission, which shall either:

—1. Reject the agreement; or

—2. Submit the agreement to the Supreme Court for approval.

—B. Order of Discipline. Pursuant to *In re Richard Worthen*, 926 P.2d 853 (Utah 1996), the Commission shall file the proposed agreement, findings of fact, conclusions of law, other pertinent documents, and order of sanction with the Supreme Court. These documents shall remain confidential until the Supreme Court has entered its final order except:

—1. Upon order of the Supreme Court; or

—2. Upon the request of the respondent.

R595-1-16. Hearing.

—A. Scheduling. Upon receipt of the respondent's answer or upon expiration of the time to answer, the hearing panel of the Commission or masters shall schedule a hearing and notify respondent of the date, time, and place of the hearing.

—B. Hearing Body. The hearing shall be conducted by a hearing panel or three special masters.

—C. Conduct of Hearing.

—1. All testimony shall be under oath.

—2. The examiner shall present evidence supporting the formal charges.

—3. Both parties shall be permitted to present evidence and produce and cross-examine witnesses.

—4. The hearing shall be recorded by a certified court reporter.

—5. When the hearing is before a hearing panel, not fewer than a quorum of the Commission shall be present when the evidence is presented.

—6. Immediately following the conclusion of the hearing, the hearing panel or special masters shall deliberate and make a preliminary decision.

—7. A letter setting forth the preliminary decision, signed by the hearing panel chair or presiding master, shall be served on the respondent and examiner as soon as possible after the conclusion of the hearing.

—8. As soon as possible after the preliminary decision has been served on the respondent and examiner, the hearing panel chair or presiding master shall prepare a memorandum decision to be signed by all the panel members or masters.

—9. The memorandum decision shall be served on the respondent and examiner, and the examiner shall prepare findings of fact, conclusions of law, and an order consistent with the memorandum decision.

—10. The findings of fact, conclusions of law, and order shall be reviewed by a quorum of the Commission and approved by a majority of a quorum of the Commission.

—11. Upon approval, the findings of fact, conclusions of law, and order shall be signed by the Commission chair and served on the respondent.

—12. After the findings of fact, conclusions of law, and order have been signed by the Commission chair and served on the respondent, the record shall be submitted to the Supreme Court for review. The record shall include all documents required by *In re Richard Worthen*, 926 P.2d 853 (Utah 1996). A copy of the record shall be provided to the respondent without cost.

—D. Dismissal or Recommendation for Sanction. The hearing panel or masters shall either dismiss the formal charges or recommend a sanction to the Supreme Court. The hearing panel or masters shall decide a matter only upon the concurrence of a majority of all members.

R595-1-17. Amendments to Notice or Answer.

—The masters, at any time before the conclusion of the hearing, or the Commission, at any time before the entry of its findings of fact, conclusions of law, and order, may allow or require amendments to the formal charges and may allow amendments to the answer. The formal charges may be amended to conform to proof or to allege additional facts. If the formal charges are amended, the respondent shall be given reasonable time to answer and present evidence in defense of the amended charges.

R595-1-18. Objection to Findings of Fact, Conclusions of Law, and Order.

—Within 15 days after service of the Commission's findings of fact, conclusions of law, and order, the respondent may file objections. Pursuant to Section 78-8-107(4) of the Utah Code, and upon request of the respondent or examiner, the Commission may schedule oral argument on the objections.

R595-1-19. Extension of Time.

—The chair of the Commission may, for good cause shown, re-schedule or extend for a single period not to exceed 60 days in the aggregate the time for filing an answer to formal charges, for the commencement of a hearing, or for filing objections to the findings of fact, conclusions of law, and order. The presiding master may similarly re-schedule or extend the time for the commencement of a hearing.

R595-1-20. Cases Involving Allegations of Mental or Physical Disability.

—A. Initiation of Disability Proceeding. A disability proceeding can be initiated by complaint, by a claim of inability to defend in a

disciplinary proceeding, or by an order of involuntary commitment or adjudication of incompetency.

~~— B. Proceedings to Determine Disability Generally. All disability proceedings shall be conducted in accordance with the procedures for disciplinary proceedings, except:~~

~~— 1. The purpose of the disability proceedings shall be to determine whether the judge suffers from a physical or mental condition that adversely affects the judge's ability to perform judicial functions;~~

~~— 2. All of the proceedings shall be confidential; and~~

~~— 3. The Commission may appoint a lawyer to represent the judge if the judge is without representation.~~

KEY: judges, judicial ethics, proceedings, sanctions

April 16, 2002

Notice of Continuation August 12, 2002

78-8-102

78-8-107]

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**Judicial Conduct Commission,
Administration
R595-2
Administration**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 27331

FILED: 08/04/2004, 14:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is proposed after comprehensive revision of the rule pursuant to division review, recent legislative changes (S.B. 161 (2004)), the Supreme Court's opinion, In re Anderson, and Legislative Audit 2003-10. (DAR NOTE: S. B. 161 is found at UT L 2004 Ch 293, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The changes involve repealing the current rule and replacing it with four new rules. This proposed new rule provides for the administration of the Judicial Conduct Commission. (DAR NOTE: The proposed repeal of Rule R595-1 in under DAR No. 27329, and the proposed new rules are R595-1 under DAR No. 27330, R595-2 under DAR No. 27331, R595-3 under DAR No. 27332, and R595-4 under DAR No. 27333 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-8-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: None.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to the State.

❖ LOCAL GOVERNMENTS: None--Judicial Conduct Commission operations do not affect local governments, and therefore, there are no costs or savings.

❖ OTHER PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Judicial Conduct Commission operations do not affect businesses.

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

JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
Room 104
645 S 200 E
SALT LAKE CITY UT 84111-3837, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Colin Winchester at the above address, by phone at 801-533-3200, by FAX at 801-533-3208, or by Internet E-mail at colin.winchester@utahbar.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Colin Winchester, Director

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R595. Judicial Conduct Commission, Administration.

R595-2. Administration.

R595-2-1. Executive Committee.

A. There is hereby established an executive committee of the Commission, comprised of the following three members of the Commission, all elected by the Commission: one legislator, one judge or member of the Utah State Bar, and one public member. The Commission chair shall serve as one of the members of, and as chair of, the executive committee.

B. The terms of committee members shall be two years. Committee members may be elected to subsequent terms.

C. The executive committee may:

1. recommend to the Commission the hiring or termination of the executive director;

2. hire and terminate the employment of other Commission staff;

3. approve the contracts of contract investigators;

4. recommend to the Commission salary increases for the executive director and other Commission staff; and

5. perform other administrative duties as assigned by the Commission.

R595-2-2. Terms of Commission Chair and Vice Chair.

The terms of the Commission chair and vice chair shall be two years. The chair and vice chair may be elected to subsequent terms.

R595-2-3. Duties of Executive Director.

- A. The executive director shall:
1. receive, acknowledge receipt of, and review complaints, refer complaints as provided by statute, conduct preliminary investigations, notify complainants about the status and disposition of their complaints, make recommendations to the Commission regarding further proceedings or the disposition of complaints, conduct full investigations or file formal charges when directed to do so by the Commission, and act as examiner;
 2. maintain records of the Commission's operations and actions;
 3. compile statistics to aid in the administration of the Commission's operations and actions;
 4. prepare and distribute an annual report of the Commission's operations and actions;
 5. prepare the Commission's budget for submission to the Commission and the Legislature, and administer the funds;
 6. subject to the approval of the Commission or the executive committee, hire and terminate Commission staff and enter into contracts with contract investigators;
 7. direct the operations of the Commission's office, and supervise other members of the Commission's staff and contract investigators;
 8. with the Commission's approval, engage experts in connection with proceedings;
 9. make available to the public, the laws, rules and procedures affecting the Commission and its operations;
 10. consider requests for extensions of time periods established by these rules, and may, upon a showing of good cause, grant such requests for a period of time not to exceed 60 days in the aggregate; and
 11. perform other duties at the direction of the Commission.
- B. Subject to the duty to direct and supervise, the executive director may delegate any of the foregoing duties to other members of the Commission's staff or contract investigators.
- C. Subject to the duty to direct and supervise, the executive director may delegate any of the foregoing duties to other members of the Commission's staff or contract investigators.

KEY: judicial conduct commission

2004

Art. VIII, Sec. 13

78-8-101 through 78-8-108

▼ ————— ▼

**Judicial Conduct Commission,
Administration
R595-3
Procedure**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 27332

FILED: 08/04/2004, 14:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is proposed after comprehensive revision of the rule pursuant to division review, recent legislative changes (S.B. 161 (2004)), the Supreme Court's opinion, In re Anderson, and Legislative Audit 2003-10. (DAR NOTE: S. B. 161 is found at UT L 2004 Ch 293, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The changes involve repealing the current rule and replacing it with four new rules. This proposed new rule provides procedures for the Judicial Conduct Commission. (DAR NOTE: The proposed repeal of Rule R595-1 in under DAR No. 27329, and the proposed new rules are R595-1 under DAR No. 27330, R595-2 under DAR No. 27331, R595-3 under DAR No. 27332, and R595-4 under DAR No. 27333 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-8-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: None

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to the State.
- ❖ LOCAL GOVERNMENTS: None--Judicial Conduct Commission operations do not affect local governments and therefore, there are no costs or savings.
- ❖ OTHER PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Judicial Conduct Commission operations do not affect businesses.

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

JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
Room 104
645 S 200 E
SALT LAKE CITY UT 84111-3837, or
at the Division of Administrative Rules.

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THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.

R595-3. Procedure.

R595-3-1. Proof.

Formal charges shall be established by a preponderance of the evidence.

R595-3-2. Applicability of Other Rules.

Except as otherwise provided in these rules, the Utah Rules of Evidence apply in all proceedings. Except as otherwise provided in these rules, the Utah Rules of Civil Procedure do not apply in Commission proceedings.

R595-3-3. Right to Counsel.

A judge shall be entitled to retain and have the assistance of counsel at every stage of the proceedings.

R595-3-4. Service.

Service of the formal complaint shall be made by personal service or certified mail upon the judge or judge's counsel. Service of all other papers or notices shall be made by regular mail with the envelope marked "confidential."

R595-3-5. Subpoena Power.

The issuance and service of subpoenas for Commission proceedings is governed by state statute.

R595-3-6. Effect of Judge's Resignation or Retirement during Proceedings.

If a judge resigns or retires during the proceedings, the Commission shall determine whether to proceed or dismiss the proceedings.

R595-3-7. Investigation.

A. Preliminary Investigation.

1. The executive director shall review all written complaints, and shall, regardless of whether the allegations contained therein would constitute misconduct or disability if true, conduct a preliminary investigation.

2. When information is received indicating judicial misconduct or disability from a source other than a written complaint, the executive director shall summarize and submit the information in writing to the Commission, but shall not conduct a preliminary investigation unless authorized by the Commission.

3. The scope of the preliminary investigation shall be determined by these rules and the assigned investigator, subject to the direction of the executive director.

4. Upon completion of the preliminary investigation, the investigator shall recommend a full investigation if there is reasonable cause to support a finding of misconduct or disability. In all other cases, the investigator shall recommend that the proceedings be dismissed.

B. Full Investigation. Within ten days after a full investigation is authorized by the Commission, the executive director shall notify the judge that a full investigation has been authorized. The notice shall:

1. inform the judge of the allegations being investigated and the canons or statutory provisions allegedly violated;

2. inform the judge that the investigation may be expanded if appropriate;

3. invite the judge to respond to the allegations in writing within 20 days; and

4. include a copy of the complaint, the preliminary investigation report(s), and any and all other documentation reviewed by the Commission in determining whether to authorize a full investigation.

R595-3-8. Formal Charges.

The Commission may, upon reasonable cause to support a finding of misconduct or disability, direct the executive director to file a formal complaint. The formal complaint shall give fair and adequate notice of the nature of the alleged misconduct or disability. The executive director shall file the formal complaint with the Commission, cause a copy to be served upon the judge or judge's counsel, and file proof of service with the Commission.

R595-3-9. Pre-Hearing Procedures.

A. Answer. Within 20 days after service, the judge may file an answer to the formal complaint.

B. Scheduling of Confidential Hearing. After receipt of the judge's answer or after expiration of the time to answer, the hearing panel or masters shall schedule a confidential hearing and notify the judge of the date, time, and place of the confidential hearing.

C. Witnesses and Exhibits. Not later than 20 days before the confidential hearing, the examiner and the judge shall: confer and attempt to agree upon uncontroverted and refuted facts and uncontested and contested issues of law; and exchange all proposed exhibits and a list of all potential witnesses.

D. Exculpatory Evidence. The examiner shall provide the judge with exculpatory evidence relevant to the formal charges.

E. Duty of Supplementation. Both parties have a continuing duty to supplement information required to be exchanged under this rule.

F. Failure to Disclose. The hearing panel chair or presiding master may preclude either party from calling a witness at the confidential hearing if the party has not provided the opposing party with the witness's name and address, any statements taken from the witness, or summaries of any interviews with the witness.

R595-3-10. Discipline by Consent.

At any time after the filing of formal charges and before final disposition by the Commission, the judge may, with the consent of the examiner, admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the Commission, which shall either approve or reject it.

R595-3-11. Confidential Hearing.

A. Authority of Hearing Panel Chair or Presiding Master. The hearing panel chair or presiding master shall rule on all motions and objections raised at the confidential hearing, may limit the time allowed for the presentation of evidence and arguments, may bifurcate any and all issues to be presented, and may make any and all other rulings regarding the procedure not contrary to statute or these rules.

B. Hearing Procedures.

1. All testimony shall be under oath.

2. The examiner and the judge shall be permitted to present evidence and produce and cross-examine witnesses, present rebuttal evidence and produce and cross-examine rebuttal witnesses, and summarize the evidence and legal issues.

3. The confidential hearing shall be recorded by a certified court reporter or other means used or allowed by courts of record in this state.

4. Panel hearing members or masters may ask questions of any witness or the judge.

5. Immediately following the conclusion of the evidence and arguments, the hearing panel or masters shall deliberate and make a decision. Any such decision shall require a majority of the hearing panel or masters participating in the confidential hearing.

C. Post-Hearing Procedures if the Decision is to Dismiss the Formal Charges. The hearing panel chair or presiding master shall prepare and sign an order of dismissal, and shall serve the same upon the judge.

D. Post-Hearing Procedures if the Decision is to Impose any Level of Sanction or Involuntary Retirement.

1. Within 60 days from the conclusion of deliberations:

a. the hearing panel chair or presiding master shall prepare a memorandum decision, which must be approved by a majority of the hearing panel or masters participating in the confidential hearing, then signed by the hearing panel chair or presiding master and served on the examiner and the judge;

b. The examiner shall prepare findings of fact, conclusions of law, and an order consistent with the memorandum decision; and

c. The findings of fact, conclusions of law, and order shall be approved and signed by the hearing panel chair or presiding master, and served on the judge.

2. The judge shall have ten days, after service of the findings of fact, conclusions of law, and order, to lodge any objections with the Commission. If no objections are lodged, the executive director shall submit the record to the Supreme Court upon the expiration of the objection period. If objections are lodged, the Commission may either resolve the objections or refer them to the Supreme Court without resolution, along with the record.

3. A copy of the record shall be provided to the judge at no cost.

R595-3-12. Amendments to Formal Complaint or Answer.

At any time before the hearing panel chair or presiding master signs the findings of fact, conclusions of law, and order, the formal complaint or answer may be amended to conform to the proof or to allege additional facts. If the formal complaint is amended, the judge shall be given reasonable time to answer and present evidence in defense of the amended charges.

R595-3-13. Reinstatement of Proceedings after Dismissal.

A. Reinstatement upon Request by Complainant.

1. If the Commission dismisses the proceedings at any time prior to the commencement of a confidential hearing, the complainant may, within 30 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

3. A determination not to reinstate the proceedings is not appealable.

B. Reinstatement upon Request by Executive Director.

1. If the Commission dismisses the proceedings at any time prior to the filing of formal charges, the executive director may, at any time upon the receipt of newly discovered evidence, request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

R595-3-14. Proceedings Involving Allegations of Mental or Physical Disability.

A. Initiation of Disability Proceeding. A disability proceeding can be initiated by: written complaint; a claim of inability to defend in a disciplinary proceeding; an order of involuntary commitment or adjudication of incompetency; or upon authorization by the Commission upon the receipt of other information as provided in these rules.

B. Proceedings to Determine Disability Generally. All disability proceedings shall be conducted in accordance with these rules, except:

1. the purpose of disability proceedings shall be to determine whether the judge suffers from a physical or mental condition that adversely affects the judge's ability to perform judicial functions; and

2. all of the proceedings shall be confidential.

KEY: judicial conduct commission

2004

Art. VIII, Sec. 13

78-8-101 through 78-8-108

▼ ————— ▼

**Judicial Conduct Commission,
Administration
R595-4
Sanctions**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27333

FILED: 08/04/2004, 14:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is proposed after comprehensive revision of the rule pursuant to division review, recent legislative changes (S.B. 161 (2004)), the Supreme Court's opinion, In re Anderson, and

Legislative Audit 2003-10. (DAR NOTE: S. B. 161 is found at UT L 2004 Ch 293, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The changes involve repealing the current rule and replacing it with four new rules. This proposed new rule provides guidelines for the imposition of sanctions by the Judicial Conduct Commission. (DAR NOTE: The proposed repeal of Rule R595-1 in under DAR No. 27329, and the proposed new rules are R595-1 under DAR No. 27330, R595-2 under DAR No. 27331, R595-3 under DAR No. 27332, and R595-4 under DAR No. 27333 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art. VIII, Sec 13; and Sections 78-8-101 through 78-8-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: None.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to the State.

❖ **LOCAL GOVERNMENTS:** None--Judicial Conduct Commission operations do not affect local governments and therefore, there are no costs or savings.

❖ **OTHER PERSONS:** None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This comprehensive revision does not alter the basic operations or functions of the Judicial Conduct Commission, and therefore, does not result in either compliance costs or compliance savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Judicial Conduct Commission operations do not affect businesses.

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

JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
Room 104
645 S 200 E
SALT LAKE CITY UT 84111-3837, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Colin Winchester at the above address, by phone at 801-533-3200, by FAX at 801-533-3208, or by Internet E-mail at colin.winchester@utahbar.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Colin Winchester, Director

R595. Judicial Conduct Commission, Administration.

R595-4. Sanctions.

R595-4-1. Dismissals with Warning or upon Stated Conditions.

A. The Commission may dismiss a complaint or formal complaint with a warning or upon stated conditions if:

1. the judge stipulates that misconduct has occurred;
2. the Commission finds that the misconduct constitutes troubling but relatively minor misbehavior; and
3. the Commission finds that no public sanction is warranted.

B. The Commission will not dismiss a complaint or formal complaint with a warning or upon stated conditions if:

1. the Commission finds that a public sanction is warranted;
2. the Commission has previously dismissed a complaint or formal complaint against the judge upon stated conditions and the current misconduct violates one or more of those conditions; or
3. the Commission finds that the current misconduct is the same or similar to misconduct established from a previous complaint or formal complaint that was dismissed with a warning or upon stated conditions.

R595-4-2. Sanctions Guidelines.

In determining an appropriate sanction for misconduct, the Commission shall consider the following non-exclusive factors:

- A. the nature of the misconduct;
- B. the gravity of the misconduct;
- C. the extent to which the misconduct has been reported or is known among court employees, participants in the judicial system or the public;
- D. the extent to which the judge has accepted responsibility for the misconduct;
- E. the extent to which the judge has made efforts to avoid repeating the same or similar misconduct;
- F. the length of the judge's service on the bench;
- G. the effect the misconduct has had upon the confidence of court employees, participants in the judicial system or the public in the integrity or impartiality of the judiciary;
- H. the extent to which the judge profited or satisfied his or her personal desires as a result of the misconduct; and
- I. the number and type of previous sanctions imposed against the judge.

KEY: judicial conduct commission

2004

Art. VIII, Sec. 13

78-8-101 through 78-8-108

Public Safety, Fire Marshal

R710-6-6

Fees

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 27351
 FILED: 08/16/2004, 13:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Liquefied Petroleum Gas Board met on July 16, 2004, and proposed that Rule R710-6 be amended. The purpose of the proposed amendment is to adjust, increase, and add fees.

SUMMARY OF THE RULE OR CHANGE: The Utah LP Gas Board proposes to amend Section R710-6-6 by adjusting, increasing, and adding fees. This amendment is to make the existing rule consist with the Appropriations Act from the 2004 session of the Utah State Legislature (S.B. 1). (DAR NOTE: S.B. 1 is found at UT L 2004 Ch 256, and was effective 07/01/2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because this proposed amendment does not effect Utah State Government.

❖ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because this proposed amendment does not effect local government.

❖ OTHER PERSONS: There would be an anticipated cost to other persons of \$20 per hour for special inspections if an LP Gas special inspection was completed using the allowance in Subsection R710-6-6(6.1.4.1). There would be an anticipated savings of \$75 on a private container inspection if the owner of that container had only one container to be inspected. The cost for private container inspections were cut in half for those that had only one privately-owned container.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a compliance cost of \$20 per hour for those that needed a special inspection rated on the newly adopted rate of \$50 per hour. The old rate was \$30 per hour.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is a \$20 per hour increase in the special inspection rate. This is only used on occasion usually be a local fire department that is asked to assist the State Fire Marshal's Office on a visual checkback or completion of corrections. This increase places the special rate fee consistent with other normally charged rates used by other agencies.

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

PUBLIC SAFETY
 FIRE MARSHAL
 Room 302
 5272 S COLLEGE DR
 MURRAY UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-6. Liquefied Petroleum Gas Rules.****R710-6-6. Fees.**

6.1 Fee Schedule.

6.1.1 License and LPG Certificates (new and renewals):

6.1.1.1 License

6.1.1.1.1 Class I - \$450.00

6.1.1.1.2 Class II - \$450.00

6.1.1.1.3 Class III - \$105.00

6.1.1.1.4 Class IV - \$150.00

6.1.1.2 Branch office license - ~~[\$337.50]~~338.00

6.1.1.3 LPG Certificate - \$30.00

6.1.1.4 LPG Certificate (Dispenser--Class B) - \$10.00

6.1.1.5 Duplicate - \$30.00

6.1.2 Examinations:

6.1.2.1 Initial examination - \$20.00

6.1.2.2 Re-examination - \$20.00

6.1.2.3 Five year examination - \$20.00

6.1.3 Plan Reviews:

6.1.3.1 More than 5000 water gallons of LPG - \$90.00

6.1.3.2 5,000 water gallons or less of LPG - \$45.00

6.1.4 Special Inspections.

6.1.4.1 Per hour of inspection - ~~[\$30.00]~~50.00

(charged in half hour increments with part half hours charged as full half hours).

6.1.5 Re-inspection (3rd Inspection or more)- -\$250.00

6.1.6 ~~[LP Gas]~~Private Container Inspection (More than one container) - \$150.00

6.1.7 Private Container Inspection (One container) 75.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

KEY: liquefied petroleum gas

~~April 1, 2004~~**October 2, 2004**

Notice of Continuation July 5, 2001

53-7-305

Public Service Commission,
Administration
R746-345
Pole Attachments of Public Utility
Companies

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 27348
FILED: 08/13/2004, 14:53

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change establishes the rates, terms, and conditions by which attachments may be made to the poles of public utilities.

SUMMARY OF THE RULE OR CHANGE: The rule proposed to be repealed applied to attachments of cable television companies only. The new rule will apply to any attaching entity. The reenacted rule establishes terms for a generally available contract by which parties may arrange pole attachments. The rule will now identify a rental rate formula and methodology by which rates are to be established for pole attachments which may be sought and made available. The reenacted rule also establishes a dispute resolution process.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-4-13 and 47 U.S.C. 224(c)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: State agency activity in relation to pole attachment activities will stay the same so there are no costs or savings.
- ❖ LOCAL GOVERNMENTS: None--Local government activities are not affected by this rule so there are no costs or savings.
- ❖ OTHER PERSONS: Undeterminable--To the extent that rates set in the rule are lower than those previously charged, revenue reductions will occur for those entities which previously charged the higher rate; this will be offset by a reduction in costs or expenses of those entities who previously paid the higher rate. A concomitant change will occur in situations where the rule sets a rate higher than that previously charged. These changes in revenues and expenses may be considered by the Commission when establishing other rates for the public utilities subject to the Commission's jurisdiction. The magnitude of the changes will also be subject to the number of attachments which are affected and in existence. There is significant dispute between pole attachment parties on the number of pole attachments which they have among themselves. Inventory taking is still occurring and disputes are still pending before the Commission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As noted in Other persons above, offsetting increases and decreases will occur. Some entities will see a reduction in revenues they receive from attaching entities, but will also see a reduction in their own expenses for the attachment costs they incur for their

own attachments with other pole owning entities. To the extent permitted by law, the Commission intends to consider the net affect of such changes when establishing rates for utilities operating within the Commission's jurisdiction.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: State and federal law charge the Commission with regulating the terms by which attachments are made to the poles of utilities operating in Utah. Changes in the utility industry, increasing reliance upon and access demands for use of available attachment space, and the increasing magnitude of disputes concerning the entire attachment process have prompted the Commission to reexamine, with industry participation, a wide spectrum of issues relating to pole attachments. As is often the case for the Commission, promulgation of the rule requires balancing interests of various parties. The Commission has crafted a rule which it believes is consistent with both state and federal law and sets terms which are conducive to the public interest and well being of the State of Utah and its citizens generally. Where permitted by law, the Commission will consider the specific fiscal impact, whether up or down, the rule will have on the operations of an individual public utility operating in Utah and subject to the Commission's ratemaking authority.

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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.

**~~R746-345. Pole Attachments for Cable Television Companies.~~
R746-345-1. Authorization.**

~~A. Authorization of Rules—Section 54-4-13, provides that the Public Service Commission shall have the power to regulate the rates, terms and conditions by which a public utility can permit attachments to poles of the public utility by cable television companies.~~

~~B. Application of Rules—These rules shall apply to each public utility that permits pole attachments to utility's poles by a cable television company.~~

R746-345-2. Tariffs and Contracts.

~~— A. Public utilities will file tariffs with the Commission which provide rates, terms and conditions by which cable television pole attachments are permitted.~~

~~— B. Tariffs will not become effective without the prior approval of the Commission.~~

~~— C. When a utility uses a contract or agreement for execution of a pole attachment tariff and physical arrangements, that contract or agreement shall be directly referenced in the tariff. A copy of the general form of that contract or agreement will be provided to the Commission with the tariff filings. When a change is required to the content and form of a contract or agreement, where the change does not create a change to the tariff content, a revised copy of the contract or agreement will be filed with the Commission prior to the use or adoption by the public utility of the changed version.~~

R746-345-3. Pole Attachment Rates.

~~— A. The rates for pole attachments will be based on a fair and reasonable portion of the utility's costs and expenses for the pole plant, or type of pole plant, investment jointly used with cable television companies.~~

~~— B. The rates can include a fair and reasonable portion of a utility's common costs and expenses which may not be, or cannot be, directly assigned to the pole plant investments accounts.~~

~~— C. The Commission will allow a public utility and the cable television companies to first negotiate tariff rates that they jointly agree are fair and reasonable. If agreement cannot be reached, the considerations that the Commission will use to judge what is fair and reasonable will include, but not be limited to, the following:~~

- ~~— 1. prevailing rates of other similar utility providers in Utah;~~
- ~~— 2. the utility's investment in pole plant used for attachments;~~
- ~~— 3. utility investment exclusion adjustments for crossarms and appurtenances;~~
- ~~— 4. incremental or carrying costs factors of pole plant;~~
- ~~— 5. poles space allocations for utility use versus television cable use.~~

R746-345-4. Tariff Rate Changes.

~~— A. A public utility will not apply to the Commission for a change in a pole attachment rate as a part of a general company rate case.~~

~~— B. A public utility will not apply for a change to the pole attachment rate prior to notifying the cable television companies then having attachments to the utility's poles. The rate change petition must provide a statement as to the cable television companies acceptance or rejection of the proposed change.~~

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation
1988

Notice of Continuation August 8, 2003
54-4-13]

R746-345. Pole Attachments of Public Utility Companies.**R746-345-1. Authorization.**

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and Utah Code Annotated 54-4-4 and 54-4-13, the Public Service Commission shall have the power to regulate the rates, terms, and conditions by which a public utility, as defined in Utah Code Annotated 54-2-1(15)(a) including telephone corporations as defined in 54-2-23(a), can permit attachments to its poles by any other public utility, wireless provider, cable television company, or other attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits attachments to its poles by any other public utility, wireless provider, cable television company or other attaching entity.

1. Although specifically excluded from regulation by the Commission in Utah Code Annotated 54-2-1(23)(b), solely for the purpose of any pole attachment, these rules apply to any wireless provider.

2. Pursuant to these rules, a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology -- The rate methodology described in Section R746-345-5 shall be used to determine rates that a public utility may charge any other public utility, wireless provider, cable television company, or other attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company or other entity that attaches to a pole owned or controlled by a public utility.

B. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

C. "Pole Attachment" -- The attachment by an attaching entity of equipment that requires a bolt, bracket, hook, or other device to secure that equipment to a utility pole of a public utility.

D. "Pole Owner" -- A public utility having ownership or control of poles used, in whole or in part, for any electric or telecommunications services.

E. "Primary Pole Attachment" -- A pole attachment of any distribution wire or cable.

F. "Secondary Pole Attachment" -- A pole attachment of any distribution wire or cable used solely to provide a service wire drop, an aerial wire or cable that runs between a customer premise and a terminal or primary attachment, where no primary pole attachment of the attaching entity is present on the pole. A secondary pole attachment that is attached to the same pole as a primary attachment of the attaching entity is considered a component of the primary attachment for purposes of this rule.

G. "Wireless Provider" -- A corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts -- A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms, and conditions for any pole attachment, to the Commission for approval.

1. A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rate, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract or SGAT shall set forth all non-recurring, standard

charges for pole attachment work, including permitting, pre-construction surveys, inspections, and applicable processing. Other pole attachment work such as engineering, make-ready, and pole change-out shall also be identified in the tariff, standard contract or SGAT and billed on a time-and-materials basis for costs actually incurred and at rates or charges consistent with tariffs, standard contracts, or SGATs on file with the Commission. The tariff, standard contract, and SGAT shall also include but not be limited to:

a. permitting process, inspection process, joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;

b. emergency access provisions; and

c. any back rent recovery or unauthorized pole attachment fee and an applicable procedure for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

3. Any permitting requirement or annual rental charge shall not apply to a new service wire drop added to a pole on which an attaching entity already has a pole attachment or overlashes to an existing pole attachment.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract and adopted the approved tariff or SGAT.

C. Exception -- In situations in which the tariff and standard contract or SGAT does not cover certain aspects of a specific pole attachment relationship and the pole owner and attaching entity voluntarily negotiate an alternative contract, the parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. An approved contract under this exception shall not materially deviate from the rates, terms and conditions, which are subject to Commission review under R746-345-3A(1), of the standard contract.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed after the effective date of this rule immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling -- An attaching entity must label its pole attachments to indicate ownership. Pole attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed after the effective date of this rule immediately upon installation. Pole Attachments installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

R746-345-5. Rental Rate Formula and Methodology.

A. Basis -- The rental rate for any pole attachment must be based on a fair and reasonable portion of the pole owner's costs and expenses for the pole plant investment that is jointly used by an attaching entity. The rental rate for any pole attachment shall be based on the pole owner's investment in distribution poles. Any rate

based on the rate formula in Subsection R746-345-5(B) shall be considered just and reasonable unless determined otherwise by the Commission.

B. Rate Formula -- A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as a per pole annual rental rate. The following formula and presumptions shall be used to establish pole attachment rates:

1. Formula: Rate per pole = Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate

2. Definitions:

a. "Carrying Charge Rate" means the percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, or other expenses that are directly or indirectly attributable to the pole owner's investment in poles. Carrying charge factors, except for the cost of capital, can be calculated on either a net or gross investment basis.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." Gross cost means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. Net cost means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.

3. Rebuttable presumptions:

a. Average pole height equals 37.5 feet.

b. Usable space per pole equals 13.5 feet.

c. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

(i) An electric primary pole attachment equals 7.5 feet;

(ii) A telecommunications primary pole attachment equals 1.0 foot;

(iii) An electric or telecommunications secondary pole attachment equals 1.0 foot; and

(iv) A cable television pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined jointly by the pole owner and wireless provider. The space used by a wireless provider may be established as an average and included in the pole owner's tariff, standard contract or SGAT pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

i. shall include the height of the pole above that which the pole owner would generally install to facilitate its own pole attachment or the pole attachments of any attaching entity;

ii. shall include actual placement of equipment and appropriate standard clearances for said equipment, of equipment placed in the usable space or unusable space on a utility pole;

iii. may not include any of the length of a vertically placed cable, wire or conduit, unless the vertically placed cable, wire or

conduit prevents another attaching entity from placing a pole attachment in the usable space of the pole;

iv. may not exceed the average pole height established in Subsection R746-345-5(B)(2)(a).

v. In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider, the pole owner or wireless provider may petition the Commission to determine the footage of space used by the Wireless provider as provided in Subsection R746-345-3(C).

4. A pole owner may not assess a fee or charge in addition to an annual pole attachment rental rate, including any non-recurring fee or charge described in Subsection R746-345-3(A)(2), for any cost included in the calculation of its annual pole attachment rental rate.

C. Commission Relief-- A pole owner or attaching entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

B. If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law and this rule, R746-345, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.

KEY: public utilities, pole attachments, telecommunications, telephone utility regulation

2004

54-4-13



School and Institutional Trust Lands,
Administration
R850-80
Sale of Trust Lands

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27347

FILED: 08/12/2004, 15:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: State statute creates temporary easements or rights-of-entry for roads that were constructed, maintained, or used on state trust lands prior to January 1, 1992. The temporary status of such easements or rights-of-entry remains in effect until they are made permanent through an application process formalized by administrative rule. The purpose of this amendment is to create a rule-based process that will provide a mechanism for receiving input and bringing closure to various claims and provide more certainty for prospective buyers of trust properties. This process is not intended to affect any valid RS2477 claims made by the counties.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide for notification to counties and other responsible authorities in order that the agency can receive input in determining the merits of perfecting easements or rights-of-entry for roads that cross trust properties proposed for disposal through sale. This process will permit any responsible authority to file an application to make the temporary easement or right-of-entry permanent. Upon receipt of an application, the agency will evaluate the request and provide the applicant with a decision at least 30 days prior to the sale of the subject property. If no application is received, or an application is not approved, the temporary easement or right-of-entry will be extinguished upon the execution of a certificate of sale.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53C-4-102 and 63-2-304; and Subsections 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1); 53C-4-202(6); 72-1-203(1)(a)(i); and 72-5-203(2)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: It is anticipated that the additional advertising required by this rule change will cost the agency approximately \$2,000 more per year.

❖ LOCAL GOVERNMENTS: The notification required by this rule amendment does not add any additional costs to local government beyond the currently established costs for perfecting an easement. However, local governments may choose to hold public meetings or provide additional advertising as a result of this notification in order to obtain support for their decision of whether or not to perfect a temporary easement. These costs would be unquantifiable as they are dependent solely upon the decisions made by the local governments.

❖ OTHER PERSONS: The notification required by this rule amendment will not add any additional costs to other persons beyond the already established fees required for perfecting easements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment to this rule which provides for additional notification concerning temporary easements will not add any additional costs for

compliance to affected persons. If an affected person is eligible to perfect an easement, the regular fees and costs already established by rule would then apply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: If a business asserts that it is a "responsible authority" under the statute, and desires to convert a temporary easement to a permanent easement prior to the agency taking an action disposing of a parcel of land through sale, that business would be required to pay the standard easement fees that the agency imposes for all other easement requests across trust lands. The amount will depend upon the length and width of the easement requested.

For easements up to 33 feet in width, the fee is \$5 per rod. For easements greater than 33 feet in width, the fee is \$10 per rod.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/04/2004

AUTHORIZED BY: Kevin S. Carter, Director

R850. School and Institutional Trust Lands, Administration.

R850-80. Sale of Trust Lands.

R850-80-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and [Sections]Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the terms and conditions for the sale of trust land; and Subsection 72-5-203(2)(a) which directs the Administration to enact rules establishing a process by which responsible authorities may apply to convert permissive temporary easements or rights-of-entry to permanent easements or rights-of-entry.

R850-80-150. Planning.

Pursuant to [Section]Subsection 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

2. Evaluation of and response to comments received through the RDCC process; and

3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-80-400(1).

R850-80-250. Determination of the Status of Temporary Easements and Rights-of-Entry.

1. Prior to the sale of any trust land, the agency shall undertake the notification process set forth in R850-80-250(2) to evaluate whether any temporary easement or right-of-entry created under Subsection 72-5-203(1)(a)(i) exists on the subject property. This evaluation shall not adjudicate the status of any highway crossing trust land that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the underlying property are recognized as valid existing rights.

2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1), that the subject property is proposed for disposal through sale. This notice will permit any responsible authority asserting a temporary easement or right-of-entry pursuant to Subsection 72-5-203(1)(a)(i) to file an application to make such temporary easement or right-of-entry permanent (the "application"). The application shall contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

(a) Certified notice shall be mailed to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property proposed for sale and a map showing its location. The executive body of the county will have 90 days from the date of the notice within which to submit the application.

(b) Notice to other responsible authorities who may have an interest in the subject property will be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property being considered for sale, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry upon sale of the subject property. Other responsible authorities will have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into a permanent property easement or right-of-entry, the agency will evaluate the request pursuant to the fiduciary responsibilities of the agency as described in Section 53C-1-302. A decision on whether or not to approve the application will be made at least 30 days prior to the sale of the subject property. Prior to the agency approving or rejecting an application, if any, the agency will review the supporting documentation submitted by the

applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-80-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, the temporary easement or right-of-entry granted pursuant to Subsection 72-5-203(1)(a)(i) on the subject property will be extinguished upon the execution of a certificate of sale.

R850-80-500. Sale Determination Procedures.

1. Preliminary Analysis

(a) The director may offer for sale, without further market analysis or sale determination, trust lands which have been:

- i) designated for disposal in General Management Plans; or
- ii) offered for sale within the previous three years but not purchased.

(b) The director may also offer for sale trust lands subject to market analysis and sale determination as provided in R850-80-500(2) and R850-80-500(3) when lands are not precluded from consideration under R850-80-500(1)(c).

(c) The director shall not further consider an application for sale when:

- i) the sale results in an unmanageable or uneconomical parcel of trust land, or eliminates or materially restricts access to a remnant holding, without additional remuneration to cover any loss in value to the remnant parcel;
- ii) the land has been, or is intended to be designated for development pursuant to R850-140;
- iii) the director finds that withdrawing the parcel from public application to develop a marketing plan is justified by market trends or anticipated market demand in the area; or
- iv) the director finds that the sale may lead to development which may have a negative effect on the value, developability or marketability of any remaining land holdings.

2. Market Analysis

(a) The agency shall contract for an appraisal in accordance with agency specifications for the purpose of estimating the fair market value of the trust land. The cost of the appraisal shall be borne by the successful purchaser of the parcel. The agency will determine the minimum acceptable selling price of the subject parcel using the appraisal, the data in (b) below and any other information which is deemed relevant. The minimum acceptable selling price of the parcel, as determined by the agency, shall be provided protected records status pursuant to [Section]Subsection 63-2-304(1) or 63-2-304(7) until the sale is consummated, unless otherwise ordered by the director.

(b) The agency shall conduct an economic analysis of the proposal, which shall include:

- i) appraisal;
- ii) real estate trends;
- iii) market demand;
- iv) opportunity costs including potential for appreciation; and
- v) associated management costs of retention.

3. Sale Determination

If the market analysis conducted pursuant to R850-80-500(2) above indicates that the increase in income to the trust from leasing the parcel, or from retaining the parcel for appreciation purposes, can reasonably be expected to exceed the return to the trust beneficiaries from the sale of the parcel, the director shall deny the sale application.

R850-80-600. Public Sale Procedures.

1. If a sale is authorized pursuant to R850-30-500(2)(h) or R850-80-400(4), the applicant shall be required to submit an amount equal to 10% of the offer to purchase. This amount shall constitute the applicant's bid for the purchase of the parcel and shall be provided protected records status pursuant to [Section]Subsection 63-2-304(1) or 63-2-304(7) until sealed bids are opened at a subsequent auction. The applicant will be allowed to enter into oral bidding subject to R850-80-600(5).

2. All sales shall be advertised through publication at least once each week for three consecutive weeks in one or more newspapers of general circulation in the county in which the land is located. Notices shall also be posted in the local governmental administrative building or courthouse and other appropriate locations. This advertisement shall indicate when and where the sale will be held. It shall contain a general description of the parcel to be sold including township, range and section and a brief description of where the parcel is located. The advertisement shall also indicate the agency office where parties interested in purchasing the land can obtain more information.

3. At least 30 days prior to the sale, notice shall be sent by certified mail to each person who owns property adjoining the land proposed for sale.

4. In addition to the requirements of R850-80-600(2), the agency may advertise sales using commonly accepted methods to the extent which the director has determined may reasonably increase the potential for additional bidding at the sale. Applicant's deposit for advertising specified by R850-80-300(1) will not be used for additional advertising.

5. Public sales shall commence with:

(a) the submission of fixed price sealed bids. A sealed bid shall contain an amount equal to at least 10% of the total amount offered to purchase the property. The agency may require these funds to be in the form of a certified check. On cash sales the purchaser shall pay the purchase price in full with guaranteed funds.

The agency reserves the right to reject any bid however submitted. No less than three of those submitting the highest bids shall be allowed to enter into oral bidding, beginning at the amount of the highest sealed bid. The number of additional parties allowed to participate in oral bidding shall be those parties who submit a sealed bid that is within 20% of the third highest sealed bid. In the event that a parcel is offered both as one piece, and broken into several sub-parcels, the prevailing bidders for each of the sub-parcels shall be allowed to participate in the oral bidding when the parcel is offered as one piece. Current Grazing Permittees, Material Permittees and Special Use Lessees who submit sealed bids shall automatically qualify to enter into oral bidding, even if their sealed bid does not otherwise meet the qualifications described above. A bidder shall be held to the value of the bidder's sealed bid; or

(b) the payment of an agency-established bidding deposit. When the sales method outlined in this subsection is used, the agency may waive the requirement to not disclose the minimum acceptable sales price imposed by R850-80-500(2)(a).

6. If no bid submitted pursuant to R850-80-600(5)(a) equals or exceeds the minimum selling price, then the sale shall not be made except as provided below.

(a) The bidders who participated in the oral bidding may, at the discretion of the officer conducting the sale, be allowed to enter into additional oral bidding, with the starting amount being the previous high bid. In the event that more than one sealed bid was submitted, but there was no oral bidding, those persons having submitted a

sealed bid who would have been allowed to enter into oral bidding pursuant to R850-80-600(5) shall be allowed to enter into oral bidding with the starting amount being the highest sealed bid. To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum acceptable selling price;

(b) if there is still not a successful bidder, the person submitting the highest bid, whether it be sealed or oral, may request the agency to reevaluate the minimum selling price. If the agency chooses to accept the request of the person submitting the highest bid, it shall contract for an independent appraisal, the cost for which shall be borne by the requesting party. If this appraisal indicates a value less than the highest bid, then the agency may elect to notify the highest bidder by certified mail and give him two weeks from the date of notice in which to purchase the property pursuant to R850-80-600(7).

7. At the consummation of the sale, the agency shall collect at least 10% of the total sale price, interest on the unpaid balance from the date of sale to the first day of the following month, the advertising and appraisal costs, and a sales closing charge. The balance shall be payable in no more than 20 annual payments. The first payment shall be payable one year from the first day of the month following the sale; subsequent payments shall be payable on the first day of the same month each year thereafter until the balance is paid in full. Payments in excess of the current obligations shall be applied to principal. Any unpaid balance, plus interest to date, may be paid in full at any time without penalty.

8. The interest rate which shall be charged against any unpaid balance at the time of sale shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the date that the sale is approved. Interest shall be calculated on a 365-day basis. Every year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the Monday prior to the first of the month previous to the due date of the annual installment.

9. Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days to remove the improvements.

R850-80-700. Certificates of Sale.

1. As soon as reasonably possible following the sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the land purchased, and shall include information regarding the amount paid, the amount due, the time when the principal and interest shall become due, the beneficiary of the land, and any other terms, covenants, deed restrictions, or conditions which the agency finds appropriate. Upon payment in full, the agency shall issue a patent pursuant to ~~[Section]~~Subsection 53C-4-102(7).

2. Certificates of sale shall be executed by the purchaser and returned to the agency within 30 days from the date of the purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice will be sent to the purchaser giving notice that after 30 days the sale will be canceled with all monies received, including the down-payment, forfeited to the Trust Lands Administration. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate and the agreement of sale shall not be final and no rights

shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to reject bids for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the agency, and that no assignment is effective until approval is given by the director in writing.

5. An assignment must be consistent with these rules, executed by the assignee and assignor and acknowledged, and clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from responsibility under the original contract.

7. Partial releases of property sold under certificates may be allowed at the discretion of the agency. The following conditions must be met:

(a) A partial release may only be made for parcels ten acres or larger;

(b) Access to the remainder of the land must be preserved without restriction;

(c) All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate must have the capacity and capability to service all lands covered by the certificate;

(d) Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the price per acre paid by the purchaser under the certificate of sale, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of guaranteed funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

(e) Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph (d) above shall not include the 10% down payment required by statute or any other payment not designated by the payor, and accepted by the agency for that purpose;

(f) The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released; and

(g) The value of the remaining land shall not be reduced below the remaining principal balance of the certificate.

8. Certificates issued pursuant to this section shall contain provisions for remedies that the agency may elect in the event of default. Those remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the contract of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity. Purchasers who have defaulted on certificates of sale may be required to make larger down-payments on subsequent sales.

R850-80-800. Agency-Initiated Sales.

1. The agency may also offer lands for sale when they have been:

(a) Subdivided by the agency pursuant to ~~[Section]~~Subsection 53C-4-102(4); or

(b) Otherwise subdivided pursuant to state law; and the subdivision is accepted by the director.

2. Sales of parcels pursuant to this section shall be made according to the following procedures:

(a) The agency may offer the subject parcels for sale after advertising pursuant to R850-80-600(2).

(b) The minimum acceptable sales price shall be no less than the appraised fair market value of the parcel and shall be disclosed.

(c) Sales shall be by public oral auction, with the minimum acceptable sales price as the starting bid. Buyers may be represented by third parties.

(d) Bidders must qualify by placing a deposit with the agency for each parcel on which they bid. The amount of the deposit shall be established by the agency for each public auction. Deposits shall be returned to unsuccessful bidders.

(e) Sealed bids shall be accepted from those unable to attend the auction and, if they equal or exceed the minimum acceptable sales price, shall be the starting bids in the oral auction. Sealed bids must clearly designate the lot on which the bid is made, and must include the qualifying deposit.

(f) Payment by the successful bidder shall be made pursuant to the applicable provisions of R850-80-600(7).

(g) In addition to the sales price, each purchaser of a parcel shall pay:

- i) a prorated portion of the appraisal costs; and
- ii) an application and sales processing charge.

(h) Other provisions of the sale shall be administered pursuant to R850-80-600(8), R850-80-600(10) and R850-80-700.

3. Over the Counter Sales

(a) Following a public auction, the director may designate any unsold parcel for over the counter sale. The designation shall continue in force for a period determined by the director, but not to exceed two years.

(b) The minimum acceptable price of an unsold parcel on an over the counter sale shall be set by the director, using one of the following:

i) The average price of at least three parcels closest in size and characteristics which were sold at the related public auction under R850-80-800(2); or

ii) A reappraisal.

4. At the discretion of the director, unsold parcels may be retained for offering at a subsequent public auction.

5. At the discretion of the director, unsold parcels may be listed with a realtor at the minimum acceptable price plus an amount equivalent to the commission which the realtor will charge on the sale.

KEY: administrative procedures, sales

~~November 1, 2002~~ **October 4, 2004**

Notice of Continuation June 27, 2002

53C-1-302(1)(a)(ii)

53C-2-201(1)(a)

53C-4-101(1)

53C-4-102

53C-4-202(6)

63-2-304

72-5-203(1)(a)(i)

72-5-203(2)(a)



Tax Commission, Administration **R861-1A-37** Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27354

FILED: 08/16/2004, 18:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-1-404 directs the Commission to promulgate rules specifying when a decision may be disclosed outside of an action or proceeding, and establishing standards for the Commission's publishing of decisions containing commercial information.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments provide that the issuance of a Commission decision to the parties is not a disclosure or publication of the decision; provides procedures for allowing a decision to be disclosed outside of an action or proceeding, and for the Commission's publishing of a decision.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-404

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--Any fiscal impacts were taken into account in S.B. 163 (2004). (DAR NOTE: S.B. 163 is found at UT L 2004 Ch 294, and was effective 03/23/2004.)

❖ **LOCAL GOVERNMENTS:** None--Any fiscal impacts were taken into account in S.B. 163 (2004).

❖ **OTHER PERSONS:** None--Any fiscal impacts were taken into account in S.B. 163 (2004).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment requires a property owner to authorize disclosure of a decision outside an action or proceeding, and to indicate what, if any, commercial information in a decision may not be published by the Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments prohibit a party from disclosing a Commission decision unless all parties to the decision have agreed with the disclosure; and requires a property taxpayer to indicate what, if any, commercial information in the decision may not be published by the Commission.

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

TAX COMMISSION

ADMINISTRATION

210 N 1950 W

SALT LAKE CITY UT 84134-0002, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleec@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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

R861. Tax Commission, Administration.**R861-1A. Administrative Procedures.****R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.**

A. The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

B. For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

C. For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

1. named party of a decision or order;
2. party requesting a private letter ruling; or
3. designated representative of a party described in C.1. or C.2.

D. For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

1. named party of a decision or order;
2. party requesting a private letter ruling; or
3. designated representative of a party described in D.1. or D.2.

[C-]E. Information that may be disclosed under Section 59-1-404(3) includes:

1. the following information related to the property's tax exempt status:

- a) information provided on the application for property tax exempt status;
- b) information used in the determination of whether a property tax exemption should be granted or revoked; and
- c) any other information related to a property's property tax exemption;

2. the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

- a) the amount of penalty or interest that is abated;
- b) information provided on an application or request for abatement of penalty or interest;
- c) information used in the determination of the abatement of penalty or interest; and
- d) any other information related to the amount of penalty or interest that is abated; and

3. the following information related to the amount of property tax due on property:

a) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

b) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

c) any other information related to the amount of taxes refunded or deducted under 3.a).

F. 1. Except as provided in F.2., commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

2. Notwithstanding F.1., commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

G. The commission may disclose commercial information in a published decision as follows.

1. If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

2. If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under G.1.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

2004

Notice of Continuation April 22, 2002

59-1-404



Tax Commission, Property Tax
R884-24P-33
2004 Personal Property Valuation
Guides and Schedules Pursuant to
Utah Code Ann. Section 59-2-301

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 27353
 FILED: 08/16/2004, 18:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 59-1-210(3) authorizes the State Tax Commission to promulgate rules that aid county officials in the performance of any duties relating to the assessment and equalization of property within the county.

SUMMARY OF THE RULE OR CHANGE: This is an annual update to the personal property guides and schedules for local assessment of business personal property and motor vehicles.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-301

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The amount of savings or cost to state government is undetermined. Tax Revenue is distributed to local governments for assessing and collecting and for the uniform school fund based on increased or decreased personal property value. Increase or decrease in 2005 tax revenue cannot be determined even if there were no changes in the percent good tables, because taxpayer acquisitions and deletion of property during 2005 is unknown. The proposed personal property schedules in this rule are raised, lowered, or remain the same for 2005 based on the type and age of the property assessed. Schedules for class 1, class 15, class 23, class 24, and class 27 are proposed with no changes for 2005 from 2004. Schedules used to value business personal property increase as much as 2 percentage points and decrease as much as 8 percentage points between the proposed rule and the previous rule. Schedules to value motor vehicles increase as much as eight percentage points and decrease as much as ten percentage points between the proposed rule and the previous rule. Proposed schedules used to value registered recreational vehicles decrease up to eleven percentage points in an assessment year compared to the previous rule. In aggregate for all personal property schedules, it is anticipated that the change in the annual tax rate will have a larger impact on revenue than will the proposed schedule changes due to amendments to this rule.

❖ LOCAL GOVERNMENTS: The amount of savings or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased personal property value. Increase or decrease in 2005 tax revenue cannot be determined even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of property during 2004 is unknown. The proposed personal property schedules in this rule are raised, lowered or remain the same for 2005 based on the type and age of the property. Schedules for class 1, class 15, class 23, class 24, and class 27 are proposed with no changes for 2005 from 2004. Schedules used to value business personal property increase as much as 2 and decrease as much as 8 percentage points between the proposed rule and the previous rule. Schedules used to value motor vehicles increase as much as eight percentage points and decrease as much as ten percentage points between the proposed rule and the previous rule. Proposed schedules used to value registered recreational vehicles decrease up to eleven percentage points in an assessment year compared to the previous rule. In aggregate for all personal property schedules, it is anticipated that the change in the annual tax rate will have a larger impact on revenue than will the proposed schedule changes due to amendments to this rule.

❖ OTHER PERSONS: In the aggregate, the amount of savings or cost to individuals and business is undetermined. Affected persons pay taxes based on increased or decreased personal property value. The proposed personal property schedules in this rule are raised, lowered or remain the same for 2005 based on the type and age of property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without

knowing the 2005 personal mix compared to the 2004 historical totals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Local business owners and property tax practitioners will once again be required to be aware of new percent good figures. However, this is no different from previous years and therefore the compliance cost in completing the assessment process will not change. The change in taxes charged for these businesses depends entirely on the mix of property since some percent good schedules are increasing and others decreasing. For example, the owner of a heavy duty truck may see an increase in taxes since the proposed percent good schedule for this class increase by as much as eight percentage points. However, the owner of commercial trailers may see a decrease in taxes due to a decrease by as much as ten percentage points compared to the previous year, depending on the model year of the trailer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated above, the fiscal impact to businesses from changes in the proposed personal property schedules due to changes in this rule will not be as significant as changes in the annual tax rate.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-33. [2004]2005 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the actual cost of the property when purchased new.

a) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

- (1) documented actual cost of the new or used vehicle; or
- (2) recognized publications that provide a method for approximating cost new for new or used vehicles.

b) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

- (1) class 6 heavy and medium duty trucks;
- (2) class 9 off-highway vehicles;
- (3) class 11 street motorcycles;
- (4) class 13 heavy equipment;
- (5) class 14 motor homes;
- (6) class 17 boats;
- (7) class 18 travel trailers/truck campers;
- (8) class 21 commercial and utility trailers;
- (9) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest; and
- (10) class 26 personal watercraft.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the

ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:

- (1) barricades/warning signs;
- (2) library materials;
- (3) patterns, jigs and dies;
- (4) pots, pans, and utensils;
- (5) canned computer software;
- (6) hotel linen;
- (7) wood and pallets;
- (8) video tapes, compact discs, and DVDs; and
- (9) uniforms.

b) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (1) retail price of the canned computer software;
- (2) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
- (3) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

d) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	69%
[02]03	40%
[01]02 and prior	10%

2. Class 2 - Computer Integrated Machinery.

a) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Examples of property in this class include:

- (1) CNC mills;
- (2) CNC lathes;
- (3) MRI equipment;
- (4) CAT scanners; and
- (5) mammography units.

c) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	[85%]86%
[02]03	71%
[01]02	[59%]60%
[00]01	51%
[99]00	[43%]44%
[98]99	[34%]35%
[97]98	25%
[96]97 and prior	16%

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

- (1) office machines;
- (2) alarm systems;
- (3) shopping carts;
- (4) ATM machines;
- (5) small equipment rentals;
- (6) rent-to-own merchandise;
- (7) telephone equipment and systems;
- (8) music systems;
- (9) vending machines;
- (10) video game machines; and
- (11) cash registers and point of sale equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	82%
[02]03	[66%]67%
[01]02	[50%]51%
[00]01	34%
[99]00 and prior	17%

4. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

- (1) furniture;
- (2) bars and sinks;
- (3) booths, tables and chairs;
- (4) beauty and barber shop fixtures;
- (5) cabinets and shelves;
- (6) displays, cases and racks;
- (7) office furniture;
- (8) theater seats;
- (9) water slides; and

(10) signs, mechanical and electrical.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	[80%]89%
[02]03	[80%]81%
[01]02	[70%]72%
[00]01	61%
[99]00	[51%]52%
[98]99	[41%]42%
[97]98	[31%]32%
[96]97	21%
[95]96 and prior	11%

5. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

- (1) heavy duty trucks;
- (2) medium duty trucks;
- (3) crane trucks;
- (4) concrete pump trucks; and
- (5) trucks with well-boring rigs.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) Cost new of vehicles in this class is defined as follows:

- (1) the documented actual cost of the vehicle for new vehicles; or
- (2) 75 percent of the manufacturer's suggested retail price.

d) For state assessed vehicles, cost new shall include the value of attached equipment.

e) The [2004]2005 percent good applies to [2004]2005 models purchased in [2003]2004.

f) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
[04]05	90%
[03]04	[65%]73%
[02]03	[60%]67%
[01]02	[55%]61%
[00]01	[50%]55%
[99]00	[46%]49%
[98]99	[41%]43%
[97]98	[36%]37%
[96]97	31%
[95]96	[26%]25%
[94]95	[21%]19%
[93]94	[16%]13%
[92]93	[11%]7%
[91]92 and prior	[6%]5%

6. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

a) Examples of property in this class include:

- (1) medical and dental equipment and instruments;
- (2) exam tables and chairs;
- (3) high-tech hospital equipment;
- (4) microscopes; and
- (5) optical equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
[03] 04	[90%] 91%
[02] 03	[83%] 84%
[04] 02	[75%] 77%
[00] 01	68%
[99] 00	[60%] 61%
[98] 99	[51%] 53%
[97] 98	[43%] 44%
[96] 97	[35%] 36%
[95] 96	27%
[94] 95	19%
[93] 94 and prior	10%

7. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

- (1) manufacturing machinery;
- (2) amusement rides;
- (3) bakery equipment;
- (4) distillery equipment;
- (5) refrigeration equipment;
- (6) laundry and dry cleaning equipment;
- (7) machine shop equipment;
- (8) processing equipment;
- (9) auto service and repair equipment;
- (10) mining equipment;
- (11) ski lift machinery;
- (12) printing equipment;
- (13) bottling or cannery equipment; and
- (14) packaging equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
[03] 04	[90%] 91%
[02] 03	[83%] 84%
[04] 02	[75%] 77%
[00] 01	68%
[99] 00	[60%] 61%
[98] 99	[51%] 53%
[97] 98	[43%] 44%
[96] 97	[35%] 36%
[95] 96	27%
[94] 95	19%
[93] 94 and prior	10%

8. Class 9 - Off-Highway Vehicles.

a) Examples of property in this class include:

- (1) dirt and trail motorcycles;
- (2) all terrain vehicles;
- (3) golf carts; and
- (4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The ~~[2004]~~2005 percent good applies to ~~[2004]~~2005 models purchased in ~~[2003]~~2004.

d) Off-Highway Vehicles have a residual taxable value of \$500.

TABLE 9

Model Year	Percent Good of Cost New
[04] 05	90%
[03] 04	[66%] 65%
[02] 03	[62%] 61%
[01] 02	[58%] 57%
[00] 01	[54%] 53%
[99] 00	[50%] 49%
[98] 99	[46%] 45%
[97] 98	41%
[96] 97	37%
[95] 96	33%
[94] 95	29%
[93] 94	25%
[92] 93	21%
[91] 92 and prior	17%

9. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
[03] 04	[91%] 92%
[02] 03	[86%] 87%
[04] 02	[80%] 82%
[00] 01	[74%] 75%
[99] 00	[68%] 69%
[98] 99	[62%] 63%
[97] 98	56%
[96] 97	[49%] 50%
[95] 96	43%
[94] 95	37%
[93] 94	31%
[92] 93	[23%] 24%
[91] 92	16%
[90] 91 and prior	8%

10. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

- (1) street motorcycles;
- (2) scooters;
- (3) mopeds; and
- (4) low-speed electric vehicles.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The ~~[2004]~~2005 percent good applies to ~~[2004]~~2005 models purchased in ~~[2003]~~2004.

d) Street motorcycles have a residual taxable value of \$500.

TABLE 11

Model Year	Percent Good of Cost New
[04]05	90%
[03]04	67%
[02]03	65%
[01]02	62%
[00]01	[60%] 59%
[99]00	[57%] 56%
[98]99	54%
[97]98	[52%] 51%
[96]97	[49%] 48%
[95]96	46%
[94]95	[44%] 43%
[93]94	[41%] 40%
[92]93	[39%] 37%
[91]92	[36%] 35%
[90]91	[33%] 32%
[89]90	[31%] 29%
[88]89	[28%] 27%
[87]88 and prior	[25%] 24%

11. Class 12 - Computer Hardware.

a) Examples of property in this class include:

- (1) data processing equipment;
- (2) personal computers;
- (3) main frame computers;
- (4) computer equipment peripherals;
- (5) cad/cam systems; and
- (6) copiers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	[70%] 62%
[02]03	[57%] 46%
[01]02	[36%] 21%
[00]01	[23%] 9%
[99]00 and prior	[14%] 7%
[98 and prior	9%

12. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

- (1) construction equipment;
- (2) excavation equipment;
- (3) loaders;
- (4) batch plants;
- (5) snow cats; and
- (6) pavement sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) [2004]2005 model equipment purchased in [2003]2004 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	[54%] 53%
[02]03	[51%] 50%
[01]02	[48%] 47%
[00]01	[45%] 44%
[99]00	[42%] 41%
[98]99	[39%] 38%

[97]98	[36%] 35%
[96]97	[33%] 32%
[95]96	[30%] 29%
[94]95	[27%] 26%
[93]94	24%
[92]93	21%
[91]92	[17%] 18%
[90]91 and prior	[14%] 15%

13. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new.

b) The [2004]2005 percent good applies to [2004]2005 models purchased in [2003]2004.

c) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
[04]05	90%
[03]04	[69%] 70%
[02]03	[66%] 67%
[01]02	[62%] 64%
[00]01	[59%] 60%
[99]00	[56%] 57%
[98]99	[53%] 54%
[97]98	50%
[96]97	47%
[95]96	44%
[94]95	[41%] 40%
[93]94	37%
[92]93	34%
[91]92	[31%] 30%
[90]91	[28%] 27%
[89]90	[25%] 24%
[88]89 and prior	[22%] 20%

14. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

a) Examples of property in this class include:

- (1) crystal growing equipment;
- (2) die assembly equipment;
- (3) wire bonding equipment;
- (4) encapsulation equipment;
- (5) semiconductor test equipment;
- (6) clean room equipment;
- (7) chemical and gas systems related to semiconductor manufacturing;
- (8) deionized water systems;
- (9) electrical systems; and
- (10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	47%
[02]03	34%
[01]02	24%

[00]01	15%
[99]00 and prior	6%

15. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

- (1) billboards;
- (2) sign towers;
- (3) radio towers;
- (4) ski lift and tram towers;
- (5) non-farm grain elevators; and
- (6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	[93%] 94%
[02]03	[89%] 91%
[01]02	[85%] 87%
[00]01	[81%] 82%
[99]00	[77%] 78%
[98]99	[72%] 74%
[97]98	[68%] 69%
[96]97	[63%] 64%
[95]96	60%
[94]95	56%
[93]94	52%
[92]93	47%
[91]92	[41%] 42%
[90]91	36%
[89]90	31%
[88]89	[26%] 25%
[87]88	20%
[86]87	14%
[85]86 and prior	7%

16. Class 17 - Boats.

a) Examples of property in this class include:

- (1) boats; and
- (2) outboard boat motors.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property.

c) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(1) the following publications or valuation methods:

(a) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(b) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(c) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

i) the manufacturer's suggested retail price for comparable property; or

ii) the cost new established for that property by a documented valuation source; or

(2) the documented actual cost of new or used property in this class.

d) The [2004]2005 percent good applies to [2004]2005 models purchased in [2003]2004.

e) Boats have a residual taxable value of \$500.

TABLE 17

Model Year	Percent Good of Cost New
[04]05	90%
[03]04	[68%] 67%
[02]03	[66%] 64%
[01]02	[63%] 62%
[00]01	[61%] 59%
[99]00	[59%] 56%
[98]99	[57%] 54%
[97]98	[55%] 51%
[96]97	[53%] 49%
[95]96	[50%] 46%
[94]95	[48%] 43%
[93]94	[46%] 41%
[92]93	[44%] 38%
[91]92	[42%] 36%
[90]91	[40%] 33%
[89]90	[37%] 31%
[88]89	[35%] 28%
[87]88	[33%] 25%
[86]87	[31%] 23%
[85]86	[29%] 20%
[84]85 and prior	[27%] 18%

17. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

- (1) travel trailers;
- (2) truck campers; and
- (3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The [2004]2005 percent good applies to [2004]2005 models purchased in [2003]2004.

d) Trailers and truck campers have a residual taxable value of \$500.

TABLE 18

Model Year	Percent Good of Cost New
[04]05	90%
[03]04	[68%] 69%
[02]03	[66%] 66%
[01]02	62%
[00]01	[58%] 59%
[99]00	[55%] 56%
[98]99	52%
[97]98	49%
[96]97	[45%] 46%
[95]96	42%
[94]95	39%
[93]94	[36%] 35%
[92]93	32%
[91]92	29%
[90]91	[26%] 25%
[89]90	[23%] 22%
[88]89 and prior	[20%] 19%

18. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

- (1) oil and gas exploration equipment;
- (2) distillation equipment;
- (3) wellhead assemblies;
- (4) holding and storage facilities;

- (5) drill rigs;
 - (6) reinjection equipment;
 - (7) metering devices;
 - (8) cracking equipment;
 - (9) well-site generators, transformers, and power lines;
 - (10) equipment sheds;
 - (11) pumps;
 - (12) radio telemetry units; and
 - (13) support and control equipment.
- b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	92%
[02]03	86%
[01]02	[79%]80%
[00]01	74%
[99]00	[67%]68%
[98]99	[60%]61%
[97]98	53%
[96]97	[46%]47%
[95]96	[40%]39%
[94]95	[33%]32%
[93]94	25%
[92]93	17%
[91]92 and prior	[8%]9%

19. Class 21 - Commercial and Utility Trailers.

- a) Examples of property in this class include:
- (1) commercial trailers;
 - (2) utility trailers;
 - (3) cargo utility trailers;
 - (4) boat trailers;
 - (5) converter gears;
 - (6) horse and stock trailers; and
 - (7) all trailers not included in Class 18.
- b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.
- c) The [2004]2005 percent good applies to [2004]2005 models purchased in [2003]2004.
- d) Commercial and utility trailers have a residual taxable value of \$500.

TABLE 21

Model Year	Percent Good of Cost New
[04]05	95%
[03]04	[71%]61%
[02]03	[67%]58%
[01]02	[63%]55%
[00]01	[59%]52%
[99]00	[55%]49%
[98]99	[51%]46%
[97]98	[47%]43%
[96]97	[43%]41%
[95]96	[39%]38%
[94]95	35%
[93]94	[31%]32%
[92]93	[27%]29%
[91]92	[23%]26%
[90]91	[19%]23%

[00]90	[15%]20%
[88]89 and prior	[11%]17%

20. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

- a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.
- b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

21. Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

- a) Examples of property in this class include:
- (1) kit-built aircraft;
 - (2) experimental aircraft;
 - (3) gliders;
 - (4) hot air balloons; and
 - (5) any other aircraft requiring FAA registration.
- b) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.
- c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
[03]04	75%
[02]03	71%
[01]02	67%
[00]01	63%
[99]00	59%
[98]99	55%
[97]98	51%
[96]97	47%
[95]96	43%
[94]95	39%
[93]94	35%
[92]93 and prior	31%

22. Class 24 - Leasehold Improvements.

- a) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:
- (1) walls and partitions;
 - (2) plumbing and roughed-in fixtures;
 - (3) floor coverings other than carpet;
 - (4) store fronts;
 - (5) decoration;
 - (6) wiring;
 - (7) suspended or acoustical ceilings;
 - (8) heating and cooling systems; and
 - (9) iron or millwork trim.
- b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.
- c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
[03] 04	94%
[02] 03	88%
[04] 02	82%
[00] 01	77%
[99] 00	71%
[98] 99	65%
[97] 98	59%
[96] 97	54%
[95] 96	48%
[94] 95	42%
[93] 94	36%
[92] 93 and prior	30%

23. Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

- a) Examples of property in this class include:
 - (1) aircraft parts manufacturing jigs and dies;
 - (2) aircraft parts manufacturing molds;
 - (3) aircraft parts manufacturing patterns;
 - (4) aircraft parts manufacturing taps and gauges;
 - (5) aircraft parts manufacturing test equipment; and
 - (6) aircraft parts manufacturing fixtures.
- b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
[03] 04	[82%] 83%
[02] 03	[67%] 68%
[04] 02	[54%] 52%
[00] 01	35%
[99] 00	[18%] 19%
[98] 99 and prior	4%

- 24. Class 26 - Personal Watercraft.
 - a) Examples of property in this class include:
 - (1) motorized personal watercraft; and
 - (2) jet skis.
 - b) Taxable value is calculated by applying the percent good factor against the cost new.
 - c) The [2004]2005 percent good applies to [2004]2005 models purchased in [2003]2004.
 - d) Personal watercraft have a residual taxable value of \$500.

TABLE 26

Model Year	Percent Good of Cost New
[04] 05	90%
[03] 04	[62%] 64%
[02] 03	[59%] 60%
[04] 02	[55%] 56%
[00] 01	52%
[99] 00	48%
[98] 99	[45%] 44%

[97] 98	[41%] 39%
[96] 97	[38%] 35%
[95] 96	[34%] 31%
[94] 95	[31%] 27%
[93] 94	[27%] 23%
[92] 93	[23%] 19%
[91] 92 and prior	[20%] 15%

25. Class 27 - Electrical Power Generating Equipment and Fixtures

- a) Examples of property in this class include:
 - (1) electrical power generators; and
 - (2) control equipment.
- b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
[03] 04	97%
[02] 03	95%
[04] 02	92%
[00] 01	90%
[99] 00	87%
[98] 99	84%
[97] 98	82%
[96] 97	79%
[95] 96	77%
[94] 95	74%
[93] 94	71%
[92] 93	69%
[91] 92	66%
[90] 91	64%
[89] 90	61%
[88] 89	58%
[87] 88	56%
[86] 87	53%
[85] 86	51%
[84] 85	48%
[83] 84	45%
[82] 83	43%
[81] 82	40%
[80] 81	38%
[79] 80	35%
[78] 79	32%
[77] 78	30%
[76] 77	27%
[75] 76	25%
[74] 75	22%
[73] 74	19%
[72] 73	17%
[71] 72	14%
[70] 71	12%
[69] 70 and prior	9%

F. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, [2004]2005.

KEY: taxation, personal property, property tax, appraisals
[December 18, 2003]2004
Notice of Continuation April 5, 2002
59-2-301



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 October 1, 2004. At its option, the agency may hold public hearings.

From the end of the waiting period through December 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, Occupational and
Professional Licensing
R156-55d-302f
Qualifications for Licensure - Good
Moral Character - Disqualifying
Convictions**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27188
Filed: 08/10/2004, 11:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a public rule hearing and as a result of written comments received by the Division, two changes are being made in this section.

SUMMARY OF THE RULE OR CHANGE: The word "dangerous" is being deleted in Subsection R156-55d-302f(1)(d) as there is no reference in the Utah Code to controlled dangerous substances. The word "charges" is being replaced with "convictions" in Subsection R156-55d-302f(1)(n) with respect to driving under the influence of alcohol within the last three years to comply with the intent of the statute. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the June 15, 2004, issue of the Utah State Bulletin, on page 4. 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: Sections 58-55-101 and 58-55-308, and Subsections 58-1-106(1)(a), 58-1-202(1)(a), 58-55-302(3)(h), 58-55-302(3)(i), and 58-55-302(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Division does not anticipate any additional costs beyond those identified in the original rule filing.
- ❖ LOCAL GOVERNMENTS: The proposed change does not apply to local governments. Therefore, there are no costs or savings to local governments.
- ❖ OTHER PERSONS: The Division does not anticipate any additional costs or savings as a result of these two changes beyond those identified in the original rule filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any additional costs or savings as a result of these two changes beyond those identified in the original rule filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment codifies

the Division's existing practice as to the good moral character evaluation of applicants. There appears to be no fiscal impact to businesses from such codification. Klarice A. 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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-55d. Utah Construction Trades Licensing Act Burglar
Alarm Licensing Rules.
R156-55d-302f. Qualifications for Licensure - Good Moral
Character - Disqualifying Convictions.**

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(h)(vi) and (3)(i), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

- (a) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2;
- (b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;
- (c) sex offenses as defined in Title 76, Chapter 5, Part 4;
- (d) any offense involving controlled [~~dangerous~~]substances;
- (e) fraud;
- (f) forgery;
- (g) perjury, obstructing justice and tampering with evidence;
- (h) conspiracy to commit any of the offenses listed herein;
- (i) burglary
- (j) escape from jail, prison or custody;
- (k) false or bogus checks;
- (l) pornography;
- (m) any attempt to commit any of the above offenses; or
- (n) two or more [~~charges~~convictions] for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:

- (a) the conduct involved;

- (b) the potential or actual injury caused by the applicant's conduct; and
 (c) the existence of aggravating or mitigating factors.

**KEY: licensing, alarm company, burglar alarms
 2004**

58-55-101

58-1-106(1)(a)

58-1-202(1)(a)

58-55-302(3)(h)

58-55-302(3)(i)

58-55-302(4)

58-55-308

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1B

Prohibition of Payment for Certain Abortion Services

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27227

Filed: 08/13/2004, 15:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to public comment from the original proposed new rule, several changes are proposed to clarify the rule.

SUMMARY OF THE RULE OR CHANGE: The definition of public funds is changed. Indirect funding language is added to the certification portion of the rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the July 1, 2004, issue of the Utah State Bulletin, on page 4. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no additional costs for these changes beyond those identified in the original rule filing.
- ❖ **LOCAL GOVERNMENTS:** There are no additional costs for these changes beyond those identified in the original rule filing.
- ❖ **OTHER PERSONS:** There are no additional costs for these changes beyond those identified in the original rule filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional costs for these changes beyond those identified in the original rule filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The definition of public funds is simplified to avoid confusion. This change will not alter the impact on business beyond what was discussed in the original filing.

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:

Doug Springmeyer at the above address, by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/03/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-1B. Prohibition of Payment for Certain Abortion Services.

R414-1B-1. Introduction and Authority.

This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in Utah Code Section 76-7-326. It is authorized by Utah Code Sections 26-1-5 and 26-18-3.

R414-1B-2. Definitions.

(1) "Abortion billing code" means the following codes:

- (a) 59840, 59841, 59850, 59851, 59852, 59855, 59856 and 59857 as shown in the Current Procedural Terminology (CPT) manual of the American Medical Association, 2003 edition; and
- (b) 69.01, 69.51, 74.91 and 75.0 as shown in the International Classification of Diseases, 9th Edition, Volumes 1 and 2, Clinical Modification, Volume 3 Procedures.

(2) "Certification" or "Certify" means submitting to the Division of Health Care Financing, Utah Department of Health, a Department-approved document signed by one authorized to act on behalf of a Medicaid provider.

(3) "Public funds" means money ~~[provided by]~~ of the state, its institutions or its political subdivisions ~~used to pay or otherwise reimburse a person, agency, or facility.~~ "Public funds" does not include (i) clinical revenue generated from nongovernmental payors; ~~or~~ (ii) gift or donor ~~[provided]~~ funds ~~from third party nongovernmental sources.~~ ~~[- (iii) investment income; or (iv) federal funds appropriated by the legislature.]~~

R414-1B-3. Certification.

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004 must certify that public funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation; or

(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable and grave damage to a major bodily function of the pregnant women provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option.

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

R414-1B-4. Standards for Certification.

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in Utah Code section 76-7-326 and to assess whether it receives public funds for any abortion that is not excepted in subsections (a), (b), or (c) of Utah Code subsection 76-7-326(2).

(2) A provider ~~[meets the requirements of this rule]~~ is not using public funds to directly or indirectly fund prohibited abortion services if it certifies that ~~[it is able to demonstrate that]:~~

(a) it uses non-public funds to make up any difference between the reimbursement it receives from all payors for services identified by abortion billing codes, other than those services identified in R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) it has adopted another method, based on generally accepted accounting principles, that provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

KEY: Medicaid, abortion, physicians, hospitals
2004
26-1-5
26-18-3



Insurance, Administration
R590-167
 Individual Small Employer, and Group
 Health Insurance Rule

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27150
 Filed: 08/16/2004, 15:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes noted in this CPR are a result of comments received by the Insurance Department during the previous comment period and the department's decision to no longer require three reports required by the rule.

SUMMARY OF THE RULE OR CHANGE: The changes in the rule are as follows: Subsection R590-167-6(3)(a) broadens smoker status to include all persons using any type of tobacco. Also clarified that tobacco use can be rated by the insurance company as a risk characteristic. The change in Subsection R590-167-11(1)(a)(i) eliminates the reference to the Interpretative Opinion 3 and instead requires compliance with applicable standards of practice as promulgated by the Actuarial Standards Board. The change in Subsection R590-167-11(2)(a)(i) requires actuary to certify that the rates filing is in compliance with Utah's rules and laws. Subsections R590-167-11(3), (4), and (6) are deleted thus removing three reporting requirements to the Department. A new Section R590-167-12 identifies as protected records those filings submitted as a requirement of this rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the June 1, 2004, issue of the Utah State Bulletin, on page 60. 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: Sections 31A-2-201 and 31A-30-106

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The deletion of the filing requirement of three reports will reduce the workload of the Health Insurance Division. The changes will not result in the addition or elimination of jobs or increase or decrease revenue to the department.

❖ **LOCAL GOVERNMENTS:** These changes will not affect local government. The changes deal only with the relationship between the department and their licensees.

❖ **OTHER PERSONS:** The addition of the wording regarding tobacco use as an allowable risk characteristic is just putting in writing what is already allowed in the code and in the marketplace. As a result of the elimination of the requirement to file the reports in Subsections R590-167-11(3), (4), and (6), 11 the work load will be reduced for those insurers selling health plans. The impact of this change should not warrant the reduction in personnel by these insurers. The change regarding actuarial certification in Section R590-167-11 will create no change in what the actuary is already doing in regards to this rule. Since there is no cost impact to the insurer regarding these changes, there should be no financial impact on purchasers of health plan policies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The addition of the wording regarding tobacco use as an allowable risk characteristic is just putting in writing what is already allowed in the code and in the marketplace. As a result of the elimination of the requirement to file the reports in Subsections R590-167-11(3), (4), and (6), the work load will be reduced for those insurers selling health plans. The impact of this change should not warrant the reduction in personnel by these insurers. The change regarding actuarial certification in Section R590-167-11 will create no change in what the actuary is already doing in regards to this rule. Since there is no cost impact to the insurer regarding these changes, there should be no financial impact on purchasers of health plan policies.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-167. Individual, Small Employer, and Group Health [Insurance]Benefit Plan Rule.

R590-167-6. Restrictions Relating to Premium Rates.

(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable,

actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Sections 31A-30-106 and 31A-30-106.5.

(3) The rate manual developed pursuant to Subsections 31A-30-106(4) and R590-167-6(1) shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(a) A covered carrier may not use case characteristics other than those specified in Subsection 31A-30-106(1)(h) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection R590-167-6(2)(b). [Smoker status]Tobacco use is not an allowable case characteristic. Tobacco use is an allowable risk characteristic when utilized in compliance with Section 31A-30-106(1)(b).

(b) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(c) The rate manual shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(d) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of an individual or small employer that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers that choose or are expected to choose a particular health benefit plan.

(e) The rate manual shall provide for premium rates to be developed in a two step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer without regard to any risk characteristics.

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106 and 31A-30-106.5, to reflect the risk characteristics.

(f) Each rate manual developed pursuant to Subsection R590-167-6(1) shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

(4)(a) Except as provided in Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect to an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than \$5 per month per individual or employee and is applied in a uniform manner to each health benefit plan in a class of business.

(5) If group size is used as a case characteristic by a covered carrier, the highest rate factor associated with a group size classification may not exceed the lowest rate factor associated with such a classification by more than 20% without prior approval of the commissioner.

(6) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f) shall be applied as follows:

(a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(b)(i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(7)(a) Except as provided in Subsection R590-167-6(7)(b), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(ii) one plus the sum of:

(iii) the risk load applicable to the individual or small employer during the previous rating period; and

(iv) 15% prorated for periods of less than one year.

(b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(ii) one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(iii) one plus the sum of:

(A) the risk load applicable to the individual or small employer during the previous rating period; and

(B) 15%, prorated for periods of less than one year.

(c) Notwithstanding the provisions of Subsections R590-167-6(7)(a) and (b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsection 31A-30-106(1)(b).

(8)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsection 31A-30-106(1) with respect to such trust.

(b) A request made under Subsection R590-167-6(8)(a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(i) adversely affect the participants and beneficiaries of the trust; and

(ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(c) A waiver granted under Subsection 31A-30-104(5) shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Section 31A-30-106(4)(b) and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board [~~including the provisions of Interpretative Opinion 3- Professional Communications of Actuaries regarding Actuarial Reports~~];

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;" and

(iv) the actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) ~~[an actuarial certification that includes the information described in Subsection R590-167-11(1)]~~ signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual; and

(iv) a description of the carriers classes of business as described in Subsection R590-167-4(1).

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan

(3) ~~[List of Health Benefit Plan Forms.~~

~~(a) The carrier shall file annually with the commissioner a list of every form to which the rule applies, that includes a description of how to find the applicable information in Subsection R590-167-11(2) for each form.~~

~~(b) The information described in Subsection R590-167-11(3)(a) shall be filed no later than April 1 of each year.~~

~~(4) Statistical Report.~~

~~(a) A covered carrier shall file annually the following information with the commissioner related to health benefit plans issued by the covered carrier to individuals or small employers in this state:~~

~~(i) number of individuals and small employers that were issued health benefit plans in the previous calendar year, separated as to newly issued plans and renewals;~~

~~(ii) number of individuals that were not issued due to underwriting rules;~~

~~(iii) number of individual and small employer health benefit plans terminated or nonrenewed in the previous calendar year categorized as:~~

~~(A) fraud or misrepresentation of the employer or insureds;~~

~~(B) noncompliance with the carrier's minimum participation requirements;~~

~~(C) noncompliance with the carrier's employer contribution requirements;~~

~~(D) nonpayment of premium; or~~

~~(E) carrier's election to nonrenew all health benefit plans issued to individuals and small employers in this state; and~~

~~(iv) Total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of December 31 of the previous calendar year.~~

~~(b) The information described in Subsection R590-167-11(4) shall be filed no later than April 1 of each year in the format provided in Appendix I, Statistical Report, published July 1, 2004. This appendix is available at the Insurance Department and on their website.~~

~~(5)](3) Index Premium Rates.~~

(a) A small employer carrier shall file annually the index premium rate information required by Section 31A-29-117(2). The report shall include:

(i) the small employer index premium rate as of March 1 of the previous year;

(ii) the small employer index premium rate as of March 1 of the current year; and

(iii) the average percentage change in the index premium rate as of March 1, of the current and preceding year.

(b) The information described in Subsection R590-167-11~~(5)](4)(a)~~ shall be filed no later than April 1 of each year.

~~(6) Midyear Coverage Count.~~

~~(a) A covered carrier shall file annually the total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of June 30 of the current calendar year, in the format provided in Appendix II, Midyear Report, published July 1, 2004, which is available at the Insurance Department and on their website.~~

~~(b) The information described in Subsection R590-167-11(6)(a) shall be filed no later than August 1 of each year.]~~

R590-167-12. Records.

Records submitted to the commissioner under this rule shall be maintained by the commissioner as protected records under Title 63, Chapter 2, Government Records Access and Management Act.

R590-167-~~12]~~13. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-167-~~13]~~14. Enforcement Date.

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

R590-167-~~14]~~15. Severability.

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

KEY: health insurance

2004

Notice of Continuation December 14, 1999

31A-30-106



Insurance, Administration
R590-229
Annuity Disclosure

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 27082
 Filed: 08/16/2004, 15:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The additional changes resulted from comments received during the latest comment period which was for the first change in proposed rule (CPR).

SUMMARY OF THE RULE OR CHANGE: The change in R590-229-3 exempts immediate and deferred annuities that contain no nonguaranteed elements from the disclosure requirements. The change in Section R590-229-4 eliminates the requirement of a label on the annuity disclosure. In Subsection R590-229-4(5), the word "not" has been added before the words "based on mortality...." The change in Section R590-229-8 replaces a specific date for the more general wording, "on the date this rule goes into effect." (DAR NOTE: This is the second change in proposed rule (CPR) for R590-229. The original proposed new rule upon which the first CPR was based was published in May 1, 2004, issue of the Utah State Bulletin, on page 12. The first CPR upon which this second CPR is based was published in the July 1, 2004, issue of the Utah State Bulletin, on page 60. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the first CPR, the second CPR, and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-425

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The changes to this rule will have no fiscal impact on the Insurance Department. The changes will not increase or decrease the department's workload to the extent it would need to increase or reduce the workforce or revenues.
- ❖ **LOCAL GOVERNMENTS:** The changes to this rule will have no fiscal impact on local government since the rule deals with the relationship of life between insurers their consumers and the regulating entity, the Insurance Department.
- ❖ **OTHER PERSONS:** Insurers will not be required to create a disclosure form for their immediate and deferred annuities that contain no nonguaranteed elements. This will save them the cost of development, production, and distribution. The savings will differ from insurer to insurer based on whether or not they subcontract out this work and the number of insureds that will need to receive the disclosure. Consumers should not be affected at all since annuity expenses should not change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Insurers will not be required to create a disclosure form for their immediate and deferred annuities that contain no nonguaranteed elements. This will save them the cost of development, production, and distribution. The savings will differ from insurer to insurer based on whether or not they subcontract out this work and the number of insureds that will need to receive the disclosure. Consumers should not be affected at all since annuity expenses should not change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Due to the elimination of the requirement to provide a disclosure form for certain types of annuities, life insurers selling these products will save the money they would have spent to develop, produce and distribute the disclosure.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/02/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.
 R590-229. Annuity Disclosure.
 R590-229-3. Scope.**

(1) This rule applies to individual and group annuity contracts and certificates except:

~~(+)~~(a) registered or non-registered variable annuities or other registered products;

~~(2)(*)~~(b)(i) annuities used to fund:

~~(+)~~(A) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);

~~(+)~~(B) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), or 403(b) where the plan is established or maintained by an employer;

~~(+)~~(C) a government or church plan defined in IRC Section 414 or a deferred compensation plan or a state or local government or a tax exempt organization under IRC Section 457; or

~~(+)~~(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

~~(+)~~(ii) Notwithstanding Subsection ~~(2)(*)~~(1)(b)(i) of this section, this rule shall apply to annuities used to fund a plan or

arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

~~[(3)](c)~~ structured settlement annuities; and

~~[(4)](d)~~ funding agreements.

(2) The disclosure document requirements of this rule do not apply to immediate and deferred annuities that contain no nonguaranteed elements.

R590-229-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Buyer's Guide" means a document which contains, and is limited to, the language contained in the "Buyer's Guide to Fixed Deferred Annuities" and its "Appendix I Equity-Indexed Annuities," dated 1998, as adopted by, and available from the National Association of Insurance Commissioners, which are incorporated in this rule by reference or go to the department's website.

(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if all of the underlying elements that go into its calculation are either guaranteed or determinable.

(4) "Disclosure document" means the document described in Subsection 6(2) of this rule ~~and shall be clearly labeled "Annuity Disclosure."~~].

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for such as "single premium deferred annuity".

(7) "Guaranteed elements" means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Non-guaranteed elements" means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

(9) "Structured settlement annuity" means a "qualified funding asset" as defined in IRC Section 130(d) or an annuity that would be a qualified funding asset under IRC Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

R590-229-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule ~~[October 1, 2004]~~ on the date this rule goes into effect.

KEY: insurance, annuity disclosure

2004

31A-2-201

31A-22-425



End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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).

Education, Administration
R277-609
Standards for School District Discipline
Plans

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR File No.: 27340
FILED: 08/10/2004, 16:50

**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 53A-1-402(1) directs the State Board of Education to establish rules and minimum standards for the public schools regarding discipline and 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: 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: State law continues to require that the State Board of Education establish rules and minimum standards for the public schools regarding discipline and control, and therefore, this rule should be continued.

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

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 08/10/2004



Education, Administration
R277-800
Administration of the Utah School for
the Deaf and the Utah School for the
Blind

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR File No.: 27341
FILED: 08/10/2004, 16:55

**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 53A-25-107 allows the State Board of Education to adopt rules for internal management of the School for the Deaf. Section 53A-25-203 determines that members of the State Board of Education are the Board of Trustees for the School for the Blind, and Section 53A-25-204 makes the Utah School for the Blind subject to all provisions of law governing the School for the Deaf.

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: State law continues to provide that the State Board of Education adopt rules regarding the internal management of the Utah School for the Deaf and the Utah School for the Blind, and therefore, this should be continued.

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

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 08/10/2004

Education, Rehabilitation
R280-150

Adjudicative Proceedings Under the
Vocational Rehabilitation Act

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 27342
FILED: 08/10/2004, 16:57

**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 63-46b-1(6) allows the State Board of Education to enact a rule affecting or governing an adjudicative proceeding if the rule is enacted according to the procedures outlined in the Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

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 Utah State Office of Rehabilitation benefits from a rule regarding adjudicative

proceedings to ensure fair hearings, and therefore, this rule should be continued.

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

EDUCATION
REHABILITATION
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

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 08/10/2004

Public Safety, Comprehensive
Emergency Management

R704-1

Search and Rescue Financial
Assistance Program

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 27336
FILED: 08/06/2004, 10:32

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 53-2-107 which requires the Division to administer the Search and Rescue Financial Assistance Program, and, with the approval of the Search and Rescue Advisory Board, make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during and since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The program remains in effect by statute and is funded. The continuation of the rule is necessary to administer the program and funds.

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

PUBLIC SAFETY
 COMPREHENSIVE EMERGENCY MANAGEMENT
 Room 1110 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:

Cheryl Luke at the above address, by phone at 801-366-0345, by FAX at 801-366-0378, or by Internet E-mail at cdluke@utah.gov

AUTHORIZED BY: Nanette Rolfe, Chief

EFFECTIVE: 08/06/2004



Public Safety, Highway Patrol
R714-600
 Performance Standards for Tow-Truck
 Motor Carriers

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 27337
 FILED: 08/06/2004, 10:47

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is enacted pursuant

to Subsection 41-6-102(1) which directs law enforcement officers to remove vehicles found upon a road or highway, and Subsections 41-6-102(4) and 53-1-106(1) which require that rules set performance standards for towing companies used by the department.

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 were received during and since the last five-year review of the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory duties which mandate the need for the rule are on-going, and therefore, the rule should be continued.

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

PUBLIC SAFETY
 HIGHWAY PATROL
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY UT 84119-5994, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Luke at the above address, by phone at 801-366-0345, by FAX at 801-366-0378, or by Internet E-mail at cdluke@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 08/06/2004



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Natural Resources

Wildlife Resources

No. 27346 (filed 08/12/2004 at 8:45 a.m.): R657-46. The Use of Game Birds in Dog Field Trials and Training.
Enacted or Last Five-Year Review: 08/18/99 (No. 22170, NEW, filed 07/01/99 at 5:18 p.m., published 07/15/99)
Extended Due Date: 12/16/2004

End of the Notices of Five-Year Review Extensions 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

Environmental Quality

Air Quality

No. 26947 (AMD): R307-415-6c. Permit Content: Compliance Requirements.
Published: March 1, 2004
Effective: August 3, 2004

No. 26947 (CPR): R307-415-6c. Permit Content: Compliance Requirements.
Published: July 1, 2004
Effective: August 3, 2004

Drinking Water

No. 26974 (AMD): R309-700. Financial Assistance: State Drinking Water Project Revolving Loan Program.
Published: March 15, 2004
Effective: August 6, 2004

No. 26974 (CPR): R309-700. Financial Assistance: State Drinking Water Project Revolving Loan Program.
Published: July 1, 2004
Effective: August 6, 2004

No. 26975 (AMD): R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.
Published: March 15, 2004
Effective: August 6, 2004

No. 26975 (CPR): R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.
Published: July 1, 2004
Effective: August 6, 2004

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 27231 (NEW): R414-71. Medical Supplies - Parenteral, Enteral, and IV Therapy.
Published: July 1, 2004
Effective: August 5, 2004

Epidemiology and Laboratory Services, Laboratory Improvement

No. 27234 (AMD): R444-14. Rule for the Certification of Environmental Laboratories.
Published: July 1, 2004
Effective: August 9, 2004

Human Services

Administration, Administrative Services, Licensing
No. 27229 (AMD): R501-7. Child Placing Adoption Agencies.
Published: July 1, 2004
Effective: August 5, 2004

Recovery Services

No. 27223 (NEW): R527-38. Unenforceable Cases.
Published: July 1, 2004
Effective: August 5, 2004

Natural Resources

Wildlife Resources

No. 27239 (AMD): R657-42. Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.
Published: July 1, 2004
Effective: August 3, 2004

No. 27240 (AMD): R657-50. Error Remedy Rule.
Published: July 1, 2004
Effective: August 3, 2004

Workforce Services

Workforce Information and Payment Services

No. 27237 (AMD): R994-305-801. Wage List Requirement.
Published: July 1, 2004
Effective: August 3, 2004

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2004, including notices of effective date received through August 16, 2004, the effective dates of which are no later than September 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).

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. 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	

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R23-3	Planning and Programming for Capital Projects	27313	5YR	07/28/2004	2004-16/33
R23-29	Across the Board Delegation	26991	5YR	03/10/2004	2004-7/35
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	27120	AMD	07/01/2004	2004-10/4
R25-7-6	Reimbursements for Meals	27164	AMD	07/02/2004	2004-11/4
<u>Fleet Operations, Surplus Property</u>					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures (5YR EXTENSION)	26973	NSC	07/02/2004	Not Printed
R35-1	State Records Committee Appeal Hearing Procedures	27277	5YR	07/02/2004	2004-15/62

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R35-3	Prehearing Conferences	27279	5YR	07/02/2004	2004-15/63
R35-4	Compliance with State Records Committee Decisions and Orders	27280	5YR	07/02/2004	2004-15/63
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R68-20-1	Authority	26949	AMD	04/01/2004	2004-5/2
R68-20-1	Authority	26987	NSC	05/01/2004	Not Printed
<u>Regulatory Services</u>					
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R81-1-23	Sales Restrictions on Products of Limited Availability	27030	AMD	06/01/2004	2004-8/10
R81-2-1	Special Orders of Liquor by Public	27031	AMD	06/01/2004	2004-8/11
R81-2-2	Liquor Returns, Refunds and Exchanges	27032	AMD	06/01/2004	2004-8/12
R81-2-7	Minors on Premises	27033	AMD	06/01/2004	2004-8/14
R81-2-8	Accepting Checks as Payment for Liquor	27034	AMD	06/01/2004	2004-8/14
R81-2-9	Accepting Credit Cards as Payment for Liquor	27035	AMD	06/01/2004	2004-8/16
R81-2-9	Accepting Credit Cards as Payment for Liquor	27201	AMD	08/02/2004	2004-12/3
R81-2-10	State Store Hours	27036	AMD	06/01/2004	2004-8/17
R81-2-11	Industry Members in State Stores	27037	AMD	06/01/2004	2004-8/18
R81-3-5	Special Orders of Liquor by Public	27038	AMD	06/01/2004	2004-8/19
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R81-3-17	Consignment Inventory Package Agencies	27042	AMD	06/01/2004	2004-8/24
R81-3-18	Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales	27043	AMD	06/01/2004	2004-8/25
R81-3-19	Credit Cards	27044	AMD	06/01/2004	2004-8/26
R81-4D-13	On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales	27045	AMD	06/01/2004	2004-8/27
R81-6-6	Religious Wine Permits	27046	AMD	06/01/2004	2004-8/29

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<u>Consumer Protection</u>					
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R156-1	General Rules of the Division of Occupational and Professional Licensing	27358	EMR	08/24/2004	Not Printed
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R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11
R156-22-503	Administrative Penalties	26859	NSC	01/01/2004	Not Printed
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	27019	AMD	05/24/2004	2004-8/32
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
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R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	AMD	07/26/2004	2004-8/39
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	CPR	07/26/2004	2004-12/73
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-44a	Nurse Midwife Practice Act Rules	27224	5YR	06/10/2004	2004-13/66
R156-46a	Hearing Instrument Specialist Licensing Act Rules	27247	5YR	06/24/2004	2004-14/56
R156-47b	Massage Therapy Practice Act Rules	26937	AMD	06/07/2004	2004-5/5
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70
R156-55b	Electricians Licensing Rules	27112	AMD	06/15/2004	2004-10/6
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R156-56	Utah Uniform Building Standard Act Rules	26866	NSC	01/01/2004	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	27101	AMD	08/17/2004	2004-9/5
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R156-61	Psychologist Licensing Act Rules	27225	5YR	06/10/2004	2004-13/67
R156-63	Security Personnel Licensing Act Rules	26888	AMD	03/04/2004	2004-3/5
R156-68	Utah Osteopathic Medical Practice Act Rules	26956	AMD	04/15/2004	2004-6/2
R156-71-202	Naturopathic Physician Formulary	26998	AMD	05/04/2004	2004-7/3
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R162-6-2	Standards of Practice	26944	AMD	04/21/2004	2004-5/6
R162-7-3	Investigation and Enforcement	26835	AMD	02/18/2004	2004-1/9
R162-105	Scope of Authority	26890	5YR	01/13/2004	2004-3/42
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R162-202	Residential Mortgage Renewal Period	26837	AMD	02/03/2004	2004-1/10
R162-202	Initial Application	27130	AMD	06/29/2004	2004-10/15
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R162-204	Residential Mortgage Record Keeping Requirements	26908	AMD	04/12/2004	2004-4/8
R162-205	Residential Mortgage Unprofessional Conduct	26907	AMD	04/12/2004	2004-4/9
R162-206	Licensing Examination	26840	NEW	02/03/2004	2004-1/12
R162-207	License Renewal	26839	NEW	02/03/2004	2004-1/13
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R164-11-2	Hearings for Certain Exchanges of Securities	26481	AMD	01/05/2004	2003-15/17
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R277-413	Accreditation of Secondary Schools, Alternative or Special Purpose Schools	26959	5YR	02/26/2004	2004-6/58
R277-418	School Professional Development Days Pilot Program	27203	NEW	07/16/2004	2004-12/7
R277-422	State Supported Voted Leeway	27204	AMD	07/16/2004	2004-12/8
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	26960	5YR	02/26/2004	2004-6/59
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R277-444	Distribution of Funds to Arts and Sciences Organizations	26979	AMD	04/15/2004	2004-6/4
R277-444	Distribution of Funds to Arts and Sciences Organizations	27271	AMD	08/17/2004	2004-14/4
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R277-486	Professional Staff Cost Program	26828	NEW	01/15/2004	2003-24/5
R277-501	Educator Licensing Renewal	26980	AMD	04/15/2004	2004-6/5
R277-501	Educator Licensing Renewal	27206	AMD	07/16/2004	2004-12/10
R277-502	Educator Licensing and Data Retention	26827	AMD	01/15/2004	2003-24/6
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R277-503	Licensing Routes	27270	AMD	08/17/2004	2004-14/6
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R277-517	Athletic Coaching Certification	26852	AMD	02/05/2004	2004-1/18
R277-518	Vocational-Technical Certificates	27000	AMD	05/05/2004	2004-7/8
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R277-520	Appropriate Licensing and Assignment of Teachers	27210	AMD	07/16/2004	2004-12/21
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R277-700	The Elementary and Secondary School Core Curriculum	26985	NSC	04/01/2004	Not Printed
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R277-720	Child Nutrition Programs	26848	NSC	02/01/2004	Not Printed
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R277-725	Electronic High School	26982	NEW	04/15/2004	2004-6/12
R277-734	Standards and Procedures for Adult Education Section 353 Funds	26963	5YR	02/26/2004	2004-6/60
R277-734	Standards and Procedures for Adult Education Section 353 Funds	27001	REP	05/05/2004	2004-7/11
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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	26896	AMD	05/18/2004	2004-3/12
R307-110-28	Regional Haze	26946	AMD	06/08/2004	2004-5/9
R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements	26898	AMD	05/18/2004	2004-3/13
R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements	26898	CPR	05/18/2004	2004-8/87
R307-110-34	Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County	26899	CPR	05/18/2004	2004-8/88
R307-110-34	Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County	26899	AMD	05/18/2004	2004-3/14
R307-150	Emission Inventories	26942	5YR	02/09/2004	2004-5/43
R307-214	National Emission Standards for Hazardous Air Pollutants	26939	5YR	02/09/2004	2004-5/44
R307-214	National Emission Standards for Hazardous Air Pollutants (5YR EXTENSION)	26887	NSC	02/09/2004	Not Printed
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R307-301	Utah and Weber Counties: Oxygenated Gasoline Program.	26897	AMD	05/18/2004	2004-3/15
R307-309	Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust	27217	5YR	06/08/2004	2004-13/68
R307-309	Davis, Salt Lake and Utah Counties, Ogden City and Any Nonattainment Area for PM10: Fugitive Emissions and Fugitive Dust (5YR EXTENSION)	27106	NSC	06/08/2004	Not Printed
R307-343	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emission Standards for Wood Furniture Manufacturing Operations (5YR EXTENSION)	27144	NSC	06/08/2004	Not Printed
R307-343	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emission Standards for Wood Furniture Manufacturing Operations	27219	5YR	06/08/2004	2004-13/69
R307-415	Permits: Operating Permit Requirements	26940	5YR	02/09/2004	2004-5/45
R307-415-6c	Permit Content: Compliance Requirements	26947	AMD	08/03/2004	2004-5/10
R307-415-6c	Permit Content: Compliance Requirements	26947	CPR	08/03/2004	2004-13/52
R307-417	Permits: Acid Rain Sources	26941	5YR	02/09/2004	2004-5/45
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R746-350	Application to Discontinue Telecommunications Service	26901	NSC	03/01/2004	Not Printed

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R865-12L-17	Procedures for Administration of the Tourism, Recreation, Cultural, and Convention Facilities Tax Pursuant to Utah Code Ann. Sections 59-12-602 and 59-12-603	27062	AMD	06/29/2004	2004-9/26
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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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<u>adult education</u> Education, Administration	26963	R277-734	5YR	02/26/2004	2004-6/60
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