

# 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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# SPECIAL NOTICES

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## Governor's Proclamation: Calling the Fifty-Fifth Legislature into a Fourth Special Session

### PROCLAMATION

**WHEREAS**, since the adjournment of the 2004 General Session of the Fifty-Fifth Legislature of the State of Utah, matters have arisen which require immediate legislative attention; and

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

**NOW, THEREFORE**, I, Olene S. Walker, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Fifty-Fifth Legislature of the State of Utah into a Fourth Special Session at the Capitol Complex Building, at Salt Lake City, Utah, on the 15th day of September, 2004, at 2:00 p.m., for the following purposes:

1. To consider allocating funds to improve the state correctional facilities in Draper;
2. To consider allocating funds to care for, preserve, and provide for the security of state lands at Range Creek;
3. To consider amendments to Title 75 regarding out-of-state trustees;
4. To consider certain deductions from income tax for persons called to active service in the military;
5. For the Senate to consent to appointments made by the governor to positions within state government of the State of Utah since the close of the 2004 General Session; and
6. To consider such other measures as may be brought to the attention of the Legislature by supplemental communication from the Governor before or during the Special Session hereby called.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Capitol Complex Building in Salt Lake City, Utah, this 10th day of September, 2004.

(State Seal)

**Olene S. Walker**  
Governor

ATTEST:

**Gayle F. McKeachnie**  
Lieutenant Governor

**Governor's Executive Order 2004-0008: 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 September 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 September, 2004.

(State Seal)

**OLENE S. WALKER**  
Governor

**ATTEST:**

**GAYLE F. MCKEACHNIE**  
Lieutenant Governor

2004/0008

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 2, 2004, 12:00 a.m., and September 15, 2004, 11:59 p.m. are included in this, the October 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 November 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 January 29, 2005, 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.

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

Agriculture and Food, Regulatory  
Services  
**R70-440**  
Egg Products Inspection

**NOTICE OF PROPOSED RULE**

(New Rule)  
DAR FILE NO.: 27425  
FILED: 09/15/2004, 11:14

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this proposed new rule is to provide egg products inspection equal to those imposed under the Federal Egg Products Inspection Act.

**SUMMARY OF THE RULE OR CHANGE:** This proposed new rule adopts and incorporates by reference 9 CFR 590, January 1, 2003, edition. Egg Products Processing is conducted under mandatory inspection, as prescribed by the Egg Products Inspection Act. 9 CFR 590 was promulgated under authority of this act to facilitate this inspection. 9 CFR 590 provides rules and regulations for the inspection of egg products including wholesome processing and proper labeling.

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

**THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:** 9 CFR 590, January 1, 2003 edition

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** State government will receive approximately \$90,000 per year from the federal government for this program.

❖ **LOCAL GOVERNMENTS:** Local governments are not involved in the administration of The Egg Products Inspection Act. This mandatory program is funded fully by the Federal Government and is administered by the United States Department of Agriculture Food Safety and Inspection Service or under cooperative agreement with the state.

❖ **OTHER PERSONS:** There will be no cost or savings to other persons. Currently food facilities processing egg products are subject to this federal rule. The adoption by reference is an effort to clean up the codes and make them equal to current federal regulations.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance cost associated with this rule. The rule is established for inspection services provided by the Department of Agriculture and Food.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule is established for the purpose of enforcing provisions of the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3087, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Marolyn Leetham, Chris Crnich, or Doug Pearson at the above address, by phone at 801-538-7114, 801-538-7150, or 801-538-7144, by FAX at 801-538-7126, 801-538-4949, or 801-538-7169, or by Internet E-mail at mleetham@utah.gov, ccrcnich@utah.gov, or dpearson@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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Cary G. Peterson, Commissioner

**R70. Agriculture and Food, Regulatory Services.**

**R70-440. Egg Products Inspection.**

**R70-440-1. Authority.**

A. Promulgated under authority of Section 4-4-2(j).

B. Scope: This rule shall apply to all egg products sold, bought, processed, manufactured or distributed within the State of Utah. It is the purpose of this rule to provide egg products inspection at least equal to those imposed under the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

**R70-440-2. Adopt by Reference.**

The Utah Department of Agriculture and Food hereby adopts and incorporates by reference the applicable provisions of the regulations issued by the United States Department of Agriculture for Egg Products, 9 CFR 590, January 1, 2003 edition.

**KEY: food inspection**

**2004**

**4-4-2(j)**



Agriculture and Food, Regulatory  
Services

**R70-960**

Weights and Measures Fee  
Registration

**NOTICE OF PROPOSED RULE**

(New Rule)  
DAR FILE NO.: 27424  
FILED: 09/15/2004, 10:13

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed new rule is to establish the standards for registration of weights and measures devices. The Division is following the legislative mandate in the establishment of this rule.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the standards for the registration and fees to be charged for the registration of weights and measures devices.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-9-15

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There will be no anticipated cost to the state budget. This rule is established to set a fee schedule for the registration of weights and measures devices used for commercial purposes in the State of Utah. The anticipated revenue to be generated through his program is \$310,000.
- ❖ LOCAL GOVERNMENTS: There will be no anticipated cost to local government budget. This rule is established to set a fee schedule for the registration of weights and measures devices used for commercial purposes in the State of Utah.
- ❖ OTHER PERSONS: Persons registering weights and measures devices used for commercial purposes will be required to pay a fee for services provided by the Department of Agriculture and Food. Fee schedules are established according to Subsection 4-2-3(2).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons registering weights and measures devices used for commercial purposes will be required to pay a fee for services provided by the Department of Agriculture and Food. Fee schedules are established according to Subsection 4-2-3(2). If registration becomes delinquent, a penalty fee shall be added as per Section 4-1-6 or the registration could be suspended or revoked.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Business or owners of weights and measures devices will be required to pay a registration fee for all devices used for commercial use.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3087, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Chris Crnich, Marolyn Leetham, or Brett Gurney at the above address, by phone at 801-538-7150, 801-538-7114, or 801-538-7158, by FAX at 801-538-4949, 801-538-7126, or 801-538-7126, or by Internet E-mail at ccnich@utah.gov, mleetham@utah.gov, or bgurney@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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Cary G. Peterson, Commissioner

**R70. Agriculture and Food, Regulatory Services.  
R70-960. Weights and Measures Fee Registration.  
R70-960-1. Authority.**

Promulgated under authority of Section 4-9-15.

**R70-960-2. Definitions of Terms.**

A. Fuel dispenser means a liquid measuring device used in a multiple product dispenser (MPD) and other fuel dispensing applications. These devices are counted as individual grades per side, per hose of dispenser, including diesel.

B. Meter means a vehicle tank meter, rack meter, LPG meter, any measuring device that is mounted on a vehicle, devices mounted as a rack meter at a fuel bulk plant or refinery, and any meter that dispenses LPG at a retail establishment. Each individual meter is counted as a device.

C. Load receiving element means that element of a scale that is designed to receive the load to be weighed, for example: platform, deck, rail, hopper, platter, plate, or scoop.

D. Small scale means any load receiving element of a weighing device capable of measuring weight between 0 pounds to 999 pounds.

E. Large scale means any load receiving element of a weighing device capable of measuring weight from 1000 pounds and up.

F. Check-out register means any device that is commercially used in a price verification system at a check-out register. Included are those devices that use Universal Product Code (U.P.C.) scanners, Electronic Product Code (E. P. C.) readers, manual entries, or any current or future use of any device that could be used at the final point of sale as a means for pricing for commercial sales.

**R70-960-3. Application.**

This rule shall apply to commercially-used weighing or measuring instruments or devices at the final point of sale. This will include the following: fuel dispensers, meter, small scale, large scale, and check-out register.

**R70-960-4. Device Registration.**

A. Weighing or measuring devices used for commercial purposes in the State of Utah shall be registered annually.

B. Each separate physical location of a business establishment must register the devices at that location.

C. The Department of Agriculture and Food may seek administrative or judicial remedies to achieve compliance with the laws and rules of Weights and Measures Fee Registration.

D. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

**R70-960-5. Device.**

The Department of Agriculture and Food may permit the registration to be applicable to a replacement for an original device or any additional devices within the annual registration period.

**R70-960-6. Annual Registration Period.**

Annual registration applications and fees are due December 31 of each year. All registrations expire on December 31 of each year. Fees paid are nonrefundable.

**R70-960-7. Registration Certificate Displayed.**

Any owner or user of commercially used weighing and measuring devices may display the current annual registration for those instruments and devices.

**R70-960-8. Registration.**

A. Registration fees are established according with Section 4-9-15(1)(h)(i). When the appropriate fee is not paid on or before January 1, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31, will be required to register appropriately. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

B. When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered weights and measures establishment.

**KEY: inspections****2004****4-9-15**

▼ ————— ▼

**Commerce, Occupational and  
Professional Licensing  
R156-46b  
Division Utah Administrative  
Procedures Act Rules**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27401

FILED: 09/02/2004, 13:39

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to update the classification of the Division's adjudicative proceedings under the Utah Administrative Procedures Act (UAPA) to comport with existing agency practices, as well as the requirements of UAPA, and to make technical amendments.

SUMMARY OF THE RULE OR CHANGE: In Section R156-46b-103, updated a statute citation. In Section R156-46b-202, deleted the following informal adjudicative proceedings initiated by a request for agency action: approval or denial of application to take a licensure examination; disqualification of examination results for cheating on examinations; and request for

rescoring of examination. It was determined that these types of proceedings do not constitute independent adjudicative proceedings, but rather merge into a licensure application request for agency action. An informal adjudicative proceeding initiated by a request for agency action was inadvertently deleted from this rule previously, specifically, boards of appeal under Subsection 58-56-8(3) and is being added in this filing. The subsections have been renumbered as necessary due to the deletions and addition. In Section R156-46b-403, updated rule sections referenced due to changes made in Section R156-46b-202 and deleted disqualification of examination results for cheating upon an examination regarding when an evidentiary hearing is held.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a) and 63-46b-1(6)

**ANTICIPATED COST OR SAVINGS TO:**

❖ THE STATE BUDGET: The Division will incur minimal costs, approximately \$40, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Very few of the types of requests for agency action being deleted have ever been received by the Division. When they are received, they will be consolidated into a single adjudicative proceeding. Therefore, the Division anticipates no further costs beyond the printing costs identified above.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments, therefore there are no costs or savings.

❖ OTHER PERSONS: The Division does not anticipate any costs, beyond a normal application fee required to submit an application for licensure, or savings as a result of these proposed amendments. Applicants for licensure would ultimately be required to file an application for licensure and pay the associated application fee regardless in order to obtain licensure. The proposed amendments merely eliminate the opportunity for a person to address in a piecemeal fashion issues associated with qualifications for licensure, in particular herein, the examination component. It does force an applicant to submit an application for licensure to obtain a decision, but this shouldn't be considered an additional cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any costs, beyond a normal application fee required to submit an application for licensure, as a result of these proposed amendments. Applicants for licensure would ultimately be required to file an application for licensure and pay the associated application fee regardless in order to obtain licensure. The proposed amendments merely eliminate the opportunity for a person to address in a piecemeal fashion issues associated with qualifications for licensure, in particular herein, the examination component. It does force an applicant to submit an application for licensure to obtain a decision, but this shouldn't be considered an additional cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is foreseen as a result of this rule filing, which clarifies and simplifies adjudicative proceedings before the Division of Occupational and Professional Licensing. 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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-46b. Division Utah Administrative Procedures Act Rules.  
R156-46b-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Title 63, Chapter 46b, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of these rules include:

- (a) classifying division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at division adjudicative proceedings; and
- (c) defining procedures for division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63 and Rule R151-46b.

**R156-46b-202. Informal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

- (a) ~~approval or denial of application to take a licensure examination;~~
- ~~(b) disqualification of examination results for cheating on examination;~~
- ~~(c) request for rescoring of examination;~~
- ~~(d) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;~~
- (e) denial of application for initial licensure or relicensure;
- (f) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);
- (g) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;
- (h) approval or denial of application for inactive or emeritus licensure status;
- (i) board of appeal under Subsection 58-56-8(3);
- (j) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil

judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;

(k) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (i);

(l) approval or denial of request to surrender licensure;

(m) approval or denial of request for entry into diversion program under Section 58-1-404;

(n) matters relating to diversion program;

(o) contested citation hearing held in accordance with Subsection 58-55-503(4)(b);

(p) approval or denial of request for modification of disciplinary order;

(q) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(r) approval or denial of request for correction of procedural or clerical mistakes;

(s) approval or denial of request for correction of other than procedural or clerical mistakes; and

(t) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;

(b) nondisciplinary proceeding which results in cancellation of licensure;

(c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(d) termination of diversion agreements.

**R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.**

(1) Evidentiary hearings are not required for informal division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the division, or together with the request for agency action if the proceeding was not initiated by the division.

(3) Evidentiary hearings are required for the following informal proceedings:

(a) R156-46b-202(1)(o), contested citation hearing held in accordance with Subsection 58-55-503(4)(b); and

(b) R156-46b-202(1)(p), board of appeal held in accordance with Subsection 58-56-8(3).

(4) Evidentiary hearings are permitted for the following informal proceedings:

(a) ~~R156-46b-202(1)(b), disqualification of examination results for cheating upon an examination;~~

~~(b) R156-46b-202(1)(n), matters relating to a diversion program; and~~

(e) R156-46b-202(2)(a), issuance of a private reprimand.

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means

service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a division informal adjudicative proceeding.

**KEY: administrative procedures, government hearings, occupational licensing**

~~[November 3, 2003]~~2004

Notice of Continuation June 11, 2001

63-46b-1(6)

58-1-106(1)(a)

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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Dexter Bell, Director

▼ ————— ▼

## Commerce, Real Estate R162-201 Residential Mortgage Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27395

FILED: 09/02/2004, 09:57

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment is necessary to define "certification" in the context of the Division's responsibility to certify providers of education for mortgage licensees.

SUMMARY OF THE RULE OR CHANGE: A definition of "certification" is added.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Providing a definition of a term used in the context of education for mortgage licensees has no impact on the State budget.

❖ LOCAL GOVERNMENTS: None--Local government is not affected by the definition of certification in the context of education for mortgage licensees.

❖ OTHER PERSONS: None--Defining a term used in regulating the providers of mortgage education has no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any costs associated with certification of education providers for mortgage licensees are attributable to the statute that requires the Division of Real Estate to certify the providers (S.B. 178, 2004 General Session). (DAR NOTE: S.B. 178 is found at UT L 2004 Ch 297, and was effective 05/03/2004.)

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 defines "certification."

### R162. Commerce, Real Estate.

#### R162-201. Residential Mortgage Definitions.

##### R162-201-1. Residential Mortgage Definitions.

201.1 Control. As used in Section 61-2c-102(1) of the Utah Residential Mortgage Practices Act, "control" is defined as the power to directly or indirectly:

- (a) direct or exercise a controlling influence over:
  - (i) the management or policies of an entity;
  - (ii) the election of a majority of the directors, officers, managers, or managing partners of an entity;
- (b) vote 20% or more of any class of voting securities of an entity by an individual; or
- (c) vote more than 5% of any class of voting securities of an entity by another entity.

201.2 Certification. "Certification" means that the holder of a certificate is authorized by the Division to:

- (a) establish and operate a school that provides courses for prelicensing requirements;
- (b) provide courses that are approved for continuing education;
- or
- (c) function as an instructor for courses approved for prelicensing requirements or for continuing education.

**KEY: residential mortgage loan origination**

~~[June 29,]~~2004

61-2c-103(3)

▼ ————— ▼

## Commerce, Real Estate R162-202 Initial Application

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27399

FILED: 09/02/2004, 13:21

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 178 (2004 General Session) requires the Division of Real Estate to: register assumed business names that are used by mortgage entities licensed with the Division; issue reciprocal licenses; and make rules for the licensing of branch offices. These rule changes are necessary to implement those new statutory responsibilities. In addition, some minor technical changes are made to provide subsection headings. (DAR NOTE: S.B. 178 is found at UT L 2004 Ch 297, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: Procedures are enacted for the registration of assumed business names, issuance of reciprocal licenses, and registration of branch offices. Subsection headings are also provided.

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

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Mortgage broker licensing requirements have no impact on the State budget.
- ❖ LOCAL GOVERNMENTS: None--Local governments are not affected by the licensing requirements for mortgage brokers.
- ❖ OTHER PERSONS: The only other persons who are affected by the licensing requirements for mortgage brokers are the mortgage brokers themselves. Any cost or savings to the mortgage brokers would be caused by S.B. 178 (2004 General Session) and not by this rule implementing the requirements of S.B. 178.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any cost or savings to mortgage licensees would be caused by S.B. 178 (2004 General Session) and not by this rule implementing the requirements of S.B. 178.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing appears to create no fiscal impact to businesses beyond those already foreseen by the Legislature's passage of S.B. 178.

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

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THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Dexter Bell, Director

**R162. Commerce, Real Estate.****R162-202. Initial Application.****R162-202-1. Licensing Examination.**

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

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

**R162-202-2. Form of Application.**

202.2 [~~Form of Application~~] All applications must be made in the form required by the division and shall include the following information:

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

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

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

202.2.4 A mailing address for the applicant;

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

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

202.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant or control person, review past and present employment and education records, and to conduct a criminal history background check;

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

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

202.2.10 On or after January 1, 2005, applicants for a mortgage officer license shall submit proof in the form required by the Division of successful completion of the 20 hours of approved prelicensing education required by Section 61-2c-202(4)(a)(i)(C) taken within one year prior to application; or

202.2.11 On or after September 1, 2005, applicants for a principal lender license shall submit proof in the form required by the Division of successful completion of the 40 hours of approved prelicensing education required by Section 61-2c-206(1)(c) taken within one year prior to application.

**R162-202-3. Incomplete Application.**

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

**R162-202-4. Nonrefundable Fees.**

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

**R162-202-5. Determining Fitness for Licensure.**

[~~202.5 Determining Fitness for Licensure.~~]  
—]202.5.1 Good Moral Character. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of good moral character, which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) A history of disregard for licensing laws;

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

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

202.5.3 Age. All applicants shall be at least 18 years old.

**R162-202-6. Conversion of Existing Registrations.**

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

**R162-202-7. Registration of Assumed Business Name.**

202.7.1 An individual licensed to engage in the business of residential mortgage loans who intends to conduct business under an assumed business name instead of the individual's own name shall register the assumed business name with the Division.

202.7.2 To register an assumed business name, an individual shall pay the applicable non-refundable fee and submit proof in the form required by the Division of a current filing of that assumed business name with the Division of Corporations and Commercial Code.

202.7.3 Misleading or deceptive business names. The Division shall not register an assumed business name if there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with an individual engaged in the residential mortgage loan business.



**R162-202-8. Reciprocal Licenses.**

202.8.1 An applicant who is a legal resident of a state with which the Division has entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

(a) An application for a reciprocal license on the form required by the Division;

(b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) An official license history from the licensing agency in the applicant's state of legal residence containing the dates of the applicant's licensure and any complaint or disciplinary history; and

(d) The information required by Subsections 202.2.1 through 202.2.11.

202.8.2 An applicant who is a legal resident of a state with which the Division has not entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

(a) An application for a reciprocal license on the form required by the Division;

(b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) A signed, notarized affidavit attesting that the applicant has at least five years experience in the business of residential mortgage loans;

(d) An official license history from the licensing agency in the applicant's state of legal residence, and any other state(s) in which the experience referred to in Subsection 202.8.2(c) was obtained, that includes the dates of the applicant's licensure and any complaint or disciplinary history; and

(e) A copy of the licensing statute or rules from any jurisdiction in which residential mortgage experience is claimed that demonstrate that the jurisdiction's licensing requirements are substantially equivalent to those of Utah; and

(f) Those items required by Subsections 202.2.1 through 202.2.11.

**R162-202-9. Branch Office.**

202.9 A branch office shall be registered with the Division prior to operation. To register the branch office, the control person of the entity must submit to the Division, on the forms required by the Division, the location of the branch office and the names of all licensees assigned to the branch, along with the fee for registering the branch office.

**KEY: residential mortgage loan origination**

**[June 29, 2004**

**61-2c-103(3)**



Commerce, Real Estate  
**R162-203**  
 Changes to Residential Mortgage  
 Licensure Statement

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27396

FILED: 09/02/2004, 11:18

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This proposed amendment is necessary for the Division to enact rules outlining the procedures for name and address changes and other status changes, for transferring mortgage licenses from one company to another, and for activating and inactivating mortgage licenses.

**SUMMARY OF THE RULE OR CHANGE:** Provisions are provided for notification to the Division of change in legal entity, change of control person, change of name, and change of address. Procedures for inactivation and activation of license are also specified.

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

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** None--The procedures for notifying the Division of various status changes by mortgage licensees do not impact the State budget.

❖ **LOCAL GOVERNMENTS:** None--Local governments are not affected by the procedures that mortgage licensees must follow to notify the Division of various status changes.

❖ **OTHER PERSONS:** None--The only other persons who are affected by the procedures that mortgage licensees must follow to notify the Division about various status changes are the mortgage licensees themselves. Specifying the procedures to be followed to make status changes with the Division will neither cost nor save mortgage licensees, with the exception that they will have to pay a \$15 activation fee to cover the cost to the Division of processing the license activation paperwork.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Specifying the procedures to be followed to make status changes with the Division will not cost mortgage licensees, with the exception that they will have to pay an activation fee of \$15 to cover the cost to the Division of processing the license activation paperwork.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing establishes standards for Division notification when a licensee's information and circumstances change. These standards appear to create no fiscal impact to businesses.

**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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Dexter Bell, Director

**R162. Commerce, Real Estate.**

**R162-203. Changes to Residential Mortgage Licensure Statement.**

**R162-203-1. Status Changes[~~to Residential Mortgage Licensure Statement~~].**

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

203.1.1 Change in Entity. If a change in a licensed entity results in the creation of a new legal entity, the new entity may not operate under the license issued to the previous entity. If the change of partners in a partnership, either by the addition or withdrawal of partners, creates a new legal entity, the new entity may not operate under the license issued by the Division to the previous partnership. The dissolution of a corporation, partnership, limited liability company, association, or other entity that holds a license issued by the Division terminates that license.

203.1.1.1 Notification of Change in Entity. The control person of a licensed entity shall provide written notification to the Division of any change in the entity that will create a new legal entity or that will cause the dissolution of the entity prior to the effective date of the change.

203.1.2. Change of name requires submission of official documentations such as a marriage certificate, divorce decree, or driver's license.

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

203.1.4. Change of name of a licensed entity shall be accompanied by evidence that the new name has been approved by the Division of Corporations and Commercial Code, Department of Commerce.

203.1.5. Change of control person of a licensed entity requires notice from the entity in the form required by the Division, signed by both the terminating control person and the new control person, and the applicable change fee.

**R162-203-2. Entity Affiliation.**

An individual licensed under the Utah Residential Mortgage Practices Act ~~must~~ shall notify the Division on the form required by the Division of ~~any~~ the entity for which that individual shall conduct residential mortgage lending before acting on behalf of that entity.

203.2.1. Transfers. Prior to transferring from one entity to another, or from one branch office to another, the licensee must

mail, deliver, or electronically transmit to the Division written notice of the transfer on the form required by the Division.

**R162-203-3. Unavailability of Licensee.**

203.3.1 Mortgage Officers. If a mortgage officer is not available to properly execute the form required to terminate the license affiliation of the mortgage officer with a licensed entity, the control person of the entity may still terminate the mortgage officer's license affiliation with the entity, provided a letter advising the mortgage officer of the termination is mailed by the control person of the entity by certified mail to the last known address of the mortgage officer. A verified copy of the letter and proof of mailing by certified mail shall be attached to form required to terminate the mortgage officer's license affiliation with the entity when the form is submitted to the Division.

203.3.2 Control Person. If control person who will no longer be the control person designated by the entity is not available to properly execute the form that is required by the Division to substitute one control person for the other, the change in control person may still be made by the entity, provided a letter advising of the change is signed by a person who is legally authorized to make staffing decisions on behalf of the entity and mailed by certified mail to the last known address of the unavailable person. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form required by the Division to substitute one control person for another when the form is submitted to the Division.

**R162-203-4. Inactivation.**

203.4 To voluntarily inactivate a license, the licensee shall deliver, mail, or electronically transmit to the Division a written request for license inactivation on the form required by the Division, which form shall have been signed by both the licensee and the licensee's control person.

203.4.1 The control person of the entity with which a mortgage officer is licensed may terminate the mortgage officer's license affiliation with the entity without the mortgage officer's consent, known as an "involuntarily inactivation" of the mortgage officer's license by complying with R162-203.3.1.

**R162-203-5. Activation.**

203.5 All licensees changing to active status must submit to the Division the applicable non-refundable activation fee and a written request for activation on the form required by the Division.

**KEY: residential mortgage loan origination**

~~[April 12,]2004~~

61-2c-205(3)



Commerce, Real Estate

**R162-207**

License Renewal

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27402

FILED: 09/02/2004, 15:26

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are made to: 1) harmonize the rule with statutory amendments made by S.B. 178 (2004 General Session); 2) specify the continuing education required on renewal; 3) provide procedures for the exemption of a licensee from the continuing education requirement; and 4) facilitate online renewal of license. (DAR NOTE: S.B. 178 is found at UT L 2004 Ch 297, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The procedures for the sending of a renewal notice by the Division are specified. Provisions detailing the late renewal and reinstatement process are added, as are requirements related to renewal applications filed by mail and those made online. Procedures are added for the exemption of a licensee from the continuing education requirement upon a showing of reasonable cause. Finally, subsection headings are added.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The procedures for renewal and reinstatement of mortgage broker licenses have no impact on the State budget.
- ❖ LOCAL GOVERNMENTS: None--Local government is not affected by the procedures for renewal and reinstatement of mortgage broker licenses.
- ❖ OTHER PERSONS: None--The only persons who are affected by the procedures for renewal and reinstatement of mortgage broker licenses are the holders of those licenses. Any cost or savings to mortgage brokers from these rule changes would be caused by the licensing statute (Section 61-2c-1, et seq.) itself and not by the rules implementing its procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any cost to mortgage brokers from these rule changes would be caused by the licensing statute (Section 61-2c-1, et seq.) itself and not by the rules implementing its procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies license renewal and reinstatement procedures and, as required by S.B. 178, also establishes standards for exemptions from the continuing education requirements. These amendments appear to create no fiscal impact to business.

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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Dexter Bell, Director

**R162. Commerce, Real Estate.****R162-207. License Renewal.****R162-207-1. License Renewal.**

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

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

**R162-207-2. Renewal of Converted Licenses.**

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

**R162-207-3. Renewal Process.**

~~[207.3 Renewal process.~~

~~—]207.3.1 Renewal Notice. A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on Division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees on or before the expiration date shown on the notice.~~

207.3.[4]2 Application for Renewal. All applications for renewal must be made in the form required by the division and shall include the following:

~~[207.3.1.1](a)~~ A licensure statement in the form required by the division;

~~[207.3.1.2](b)~~ The renewal fee and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

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

~~[207.3.1.4](d)~~ The current home street address and home telephone number of any individual applicant or control person of an entity applicant;

~~[207.3.1.5](e)~~ A current mailing address for the applicant;

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

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

~~207.3.1.8~~(h) If, in the two years preceding application for renewal, an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the applicant must provide the documents stating the sanction taken against the license or registration and the reasons therefore. ~~and~~

207.3.3 Continuing Education Requirement. All licensees are required to have completed their continuing education requirement prior to applying to renew.

207.3.3.1 Documentation of Continuing Education. Any licensee who renews online and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for two years following renewal. The licensee shall produce those certificates for audit upon request by the Division.

207.3.3.2 Out of State Courses. Continuing education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes by the licensing agency in the other state and the subject matter of the course relates to protection of the public, but not to state-specific licensing laws. Evidence must be retained by the licensee, and provided to the Division upon request, that the course was certified by the other state at the time the course was taken.

207.3.4 Late Renewal. If all required renewal forms, fees, and documentation have not been received or postmarked by the expiration date of the license, the license shall expire. When an active license expires, an individual licensee's affiliation with a licensed entity automatically terminates.

207.3.4.1 A licensee may apply to renew an expired license within thirty days after the expiration date of the license by completing all of the renewal requirements and paying a non-refundable late fee.

207.3.4.2 After the thirty day period, and until six months after the expiration date of the license, a licensee may apply to reinstate a license by completing all of the renewal requirements, paying a non-refundable late fee, and providing proof of successful completion of 12 hours of continuing education in addition to that required for a timely renewal.

#### **R162-207-4. Current Entity Name Registration.**

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

#### **R162-207-5. Incomplete Application.**

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

#### **R162-207-6. Nonrefundable Fees.**

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

#### **R162-207-7. Determining Fitness for Renewal.**

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

#### **R162-207-8. Applications Filed by Mail.**

207.8 The Division will consider a properly completed application for renewal that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.

#### **R162-207-9. Misrepresentation on an Application.**

207.9 Any misrepresentation in an application for renewal, regardless of whether the application is filed with the Division by mail or made online, will be considered a separate violation of these rules and grounds for disciplinary action against the licensee.

#### **R162-207-10. Exemption from Continuing Education Requirement.**

207.10 A licensee may obtain an exemption from the continuing education requirement of R162-208.1 for a period not to exceed four years upon a finding by the Division that there is reasonable cause to grant the exemption.

207.10.1 Exemptions from the continuing education requirement may be granted for reasons including military service, prolonged absence from Utah for religious or secular service, and extended or serious illness.

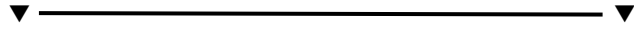
207.10.2 A licensee seeking an exemption from the continuing education requirement shall apply to the Division for an exemption. An application for an exemption from the continuing education requirement shall set forth with specificity the reasons why the licensee is unable to complete the continuing education and the reasons why the licensee believes that an exemption would be reasonable.

207.10.3 A licensee may not seek a retroactive exemption by applying for the exemption after the time period for renewal and reinstatement of a license has already passed.

207.10.4 All applications for an exemption shall be considered in an informal proceeding before the Division Director or his designee and shall be based on the information submitted with the application. No hearing will be permitted.

207.10.5 Upon a finding of reasonable cause, the Division shall grant the exemption from the continuing education requirement for a specified period of time, not to exceed four years.

**KEY: residential mortgage loan origination**  
~~February 3,~~2004  
 61-2c-103(3)  
 61-2c-202(4)(a)(ii)



Commerce, Real Estate  
**R162-208**  
 Continuing Education

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27403

FILED: 09/02/2004, 16:36

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 178 (2004 General Session) assigned the Division the additional responsibility of certifying education providers who offer continuing education courses to mortgage brokers regulated by the Division, and authorized the Division to make rules establishing the certification criteria and procedures. S.B. 178 also gave the Division a joint role with the Commission in approving continuing education course topics. (DAR NOTE: S.B. 178 is found at UT L 2004 Ch 297, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The Division is added to Subsection R162-208-6 on approval of continuing education topics. The information that is required on course completion certificates is expanded. Procedures and criteria for continuing education instructor and course certification and renewal are added. Sections are also added to govern the conduct of certificate holders.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(6)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The procedures and criteria for the certification of continuing education for mortgage licensees does not affect the State budget.  
 ❖ LOCAL GOVERNMENTS: None--Local government is not affected by the procedures and criteria for certification of continuing education for mortgage licensees.  
 ❖ OTHER PERSONS: The only other persons who are affected by the certification of continuing education for mortgage licensees are the instructors and providers of that continuing education. Education instructors and providers will not incur any savings as a result of having to apply for and receive certification from the Division. There will be increased cost to the instructors and providers in the form of certification fees and the cost of going through the certification process. However, that increased cost is attributable to the statutory change that requires they be certified (S.B. 178, 2004 General Session) and not to these rules implementing the certification process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be increased cost to the instructors and providers in the form of certification fees and the cost of going through the certification process. However, that increased cost is attributable to the statutory change that requires they be certified (S.B. 178, 2004 General Session) and not to these rules implementing the certification process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing regarding continuing education certification appears to create no fiscal impact to businesses beyond those already anticipated by the Legislature's passage of S.B. 178.

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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Dexter Bell, Director

**R162. Commerce, Real Estate.**

**R162-208. Continuing Education.**

**R162-208-1. Required Hours of Continuing Education.**

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

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

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

**R162-208-2. Proof of Continuing Education Hours.**

208.2 ~~[Proof of continuing education hours.]~~Proof of continuing education hours must be in the form required by the ~~[d]~~Division.

**R162-208-3. Credit Hours.**

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

**R162-208-4. Subject Matter.**

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

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

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

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

**R162-208-5. Unacceptable Subject Matter.**

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

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

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

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

**R162-208-6. Education Committee.**

208.6 ~~[Education Committee.]~~The commission will appoint an Education Committee, the purpose of which will be to assist the Division and the commission in approving continuing education course topics. The Education Committee will make recommendations to the Division and the commission about whether any particular course topic is sufficiently related to residential mortgage principles and practices, and whether the topic would tend to enhance the competency and professionalism of licensees, to justify placing the topic on the list of course topics that are acceptable for continuing education purposes. The Division and the commission may accept or reject the Committee's recommendation on any course topic.

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

208.6.2 If the Education Committee turns down a request to approve a certain topic for continuing education purposes, the party who requested that the topic be approved may petition the Division and the commission on an individual basis for evaluation and approval of the topic as being acceptable for continuing education purposes. The Petition must be made in writing, addressed to the Division and the commission in care of the ~~[d]~~Division, and must state specific reasons why the requester believes that the topic

qualifies for continuing education purposes. If the Division and the commission find[s] that the topic is acceptable for continuing education purposes, the ~~[commission shall direct the d]~~Division ~~[to]~~shall add the topic to the list maintained by the ~~[d]~~Division of approved continuing education topics.

**R162-208-7. Course Completion Certificate.**

208.7 The course provider shall issue a course completion certificate in the form required by the ~~[d]~~Division to all licensees who successfully complete a course in a topic that is approved for continuing education purposes. The course completion certificate shall indicate the number of credit hours successfully completed by the student and must be signed by the student and the instructor who taught the course. The course completion certificate must include the course title, date of the course, course certificate number, and course certificate expiration date.

**R162-208-8. Online Courses.**

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

**R162-208-9. Continuing Education Instructor Certification.**

208.9 All instructors of courses to be taught for continuing education purposes 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.

208.9.1 Continuing education course instructor applicants shall meet the requirements set forth in Section 210.5 and Section 210.7 of these rules, and shall demonstrate knowledge of the subject matter of the course they intend to teach by submitting proof of the following:

(a) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course which the applicant intends to instruct; or

(b) 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

(c) any combination of at least three years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct.

208.9.2 Instructor applicants shall demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

(a) a state teaching certificate or showing successful completion of appropriate college courses in the field of education; or

(b) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(c) evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

208.9.3 Upon approval by the Division, an instructor shall be issued a certification to act as a continuing education instructor. A continuing education instructor certification shall expire twenty-four months after its issuance. An instructor shall apply for renewal of a continuing education instructor certification prior to the expiration of the instructor's current certification, using the form required by the Division.

208.9.3.1 To qualify for renewal of instructor certification, an instructor must provide proof of having taught a minimum of one class in each course for which renewal is sought in the year preceding application for renewal. The term of a renewed instructor certification shall be twenty-four months.

208.9.3.1.1 If the instructor has not taught during the year preceding renewal 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 instructor's present level of expertise in the subject matter of the course.

208.9.4 Reinstatement of Expired Instructor Certification. 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. When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to completing all of the requirements for a timely renewal. After the 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 residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply by following the procedure for obtaining original certification.

#### **R162-208-10. Continuing Education Course Certification.**

208.10 Continuing education course providers are required to apply to the Division for certification of any course for which continuing education credit is promised at least 60 days prior to the anticipated date of the first class.

208.10.1 Approved continuing education providers may include accredited colleges and universities, public or private vocational schools, national and state mortgage related professional societies and organizations, and proprietary schools.

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

208.10.3 Submission of Course for Certification. The application shall include the non-refundable instructor certification fee of \$50.00 and the non-refundable \$70.00 course certification fee per course per instructor. The application shall be made on the form approved by the Division which shall include the following information:

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

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

(c) 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 30 minutes each, the instructor for each segment, and the teaching technique used in each segment;

(d) A complete description of all materials to be distributed to the participants;

(e) The date, time and locations of each course;

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

(g) 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;

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

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

(j) 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 a licensee's ability to provide greater protection of, and service to, the public;

(k) A signed statement agreeing not to perform marketing for a specific company or professional service, or to market personal sales products;

(l) 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:

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

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

(iii) Space for the signature of the course sponsor and a space for the licensee's signature; and

(m) Signature of the course coordinator or director.

208.10.4 Distance Education. 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 if the particular distance education method has been approved by the Commission and the Division. Application must be made to the Division on the form required by the Division for certification of courses that do not take place in a traditional classroom setting.

#### **R162-208-11. Conditions of Certification.**

208.11.1 Course Completion Certificates. Upon completion of the educational program the course provider shall furnish to each student a certificate of completion in the form required by the Division.

208.11.1.1 Course completion certificates may be given only to those students who have attended a minimum of 90% of the required class time of a live lecture course. Within 10 days of the end of the course, the course provider shall furnish to the Division a roster of students and their license numbers for whom certificates were issued.

208.11.2 Registration Records. A course provider shall maintain for three years a record of registration of each individual completing a course and any other information required by the Division regarding the individual's attendance at the course, including exam results, if any.

208.11.3 Course providers shall require that a student registered for a distance education course completes the course within one year of the date the student originally registered for the course.

208.11.4 Material Changes in Courses Certified for Continuing Education Purposes. Whenever there is a material change in a certified continuing education course, including a change in curriculum, course length, instructor, or refund policy, the provider shall promptly notify the Division in writing.

208.11.5 Course Evaluation Forms. At the end of each course, course providers shall require that each student complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class, sealed in an envelope, and mailed by the course provider to the Division within 10 days of the last class.

#### **R162-208-12. Continuing Education Course Certification and Renewal.**

208.12 All course certifications shall expire two years after their issuance.

208.12.1 Application for renewal of a continuing education course certification shall be made on the form required by the Division and shall include the non-refundable renewal fee.

208.12.1.1 If the certification of a continuing education 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.

208.12.2 After a course has been renewed three times, the course provider will be required to apply for a new certification.

#### **R162-208-13. Division Evaluation and Monitoring of Courses and Instructors.**

208.13.1 The Division shall cause certified continuing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

208.13.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

#### **R162-208-14. Individual Application for Continuing Education Credit.**

208.14 A licensee may apply for continuing education credit for any non-certified continuing education course if the licensee believes the course will improve his ability to better protect or serve the public, provided the course was taken from a nationwide education provider. The subject matter of the course may not relate exclusively to the practice of the residential mortgage business in a state other than the State of Utah.

#### **R162-208-15. Limitation on Multiple Use of Credit Hours.**

208.15 A mortgage licensee who is also licensed by the Division as a real estate broker, real estate sales agent, or real estate appraiser may not receive credit toward renewal of a mortgage

license for continuing education hours that have already been used toward renewal of a real estate broker, real estate sales agent, or real estate appraiser license.

**KEY: residential mortgage loan origination**

~~February 3,~~ 2004

61-2c-103(3)

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

## Commerce, Real Estate **R162-209** Administrative Proceedings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27404

FILED: 09/02/2004, 16:49

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** It is necessary to specify the administrative procedures for a new responsibility assigned to the Division by S.B. 178 (2004 General Session), which is certifying providers of prelicensing education and continuing education for mortgage licensees. (DAR NOTE: S.B. 178 is found at UT L 2004 Ch 297, and was effective 05/03/2004.)

**SUMMARY OF THE RULE OR CHANGE:** Proceedings on original or renewal applications for education certification are designated as informal adjudicative proceedings. No hearings will be required in these proceedings.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 61-2c-103(6)

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--The certification procedures for those who provide prelicensing education and postlicensing education to mortgage licensees has no impact on the State budget.

❖ **LOCAL GOVERNMENTS:** None--Local government is not affected by the certification procedures for the providers of the prelicensing and postlicensing education for mortgage licensees.

❖ **OTHER PERSONS:** The only other persons who could be affected by the mortgage education certification procedures are the providers of that education. Because the education certification will be handled in informal adjudicative proceedings instead of formal adjudicative proceedings, there may be a cost savings to the applicants in an amount that cannot be calculated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The parties who apply for education certification should not incur additional cost because education certification will be handled in informal adjudicative proceedings instead of formal adjudicative proceedings. If anything, handling these matters in informal



proceedings may result in a cost savings to the applicants in an amount that cannot be calculated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing, which designates certification of courses, schools and instructors as informal adjudicative proceedings, appears to create no fiscal impact to businesses.

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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Dexter Bell, Director

## **R162. Commerce, Real Estate.**

### **R162-209. Administrative Proceedings.**

#### **R162-209-1. Formal Adjudicative Proceedings.**

Any adjudicative proceeding as to the following matters shall be conducted on a formal basis:

209.1.1. A disciplinary action commenced by the Division following investigation of a complaint; and

209.1.2. Any proceedings conducted subsequent to the issuance of a cease and desist order.

#### **R162-209-2. Informal Adjudicative Proceedings.**

209.2.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

209.2.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules.

209.2.3. A party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

209.2.4. All proceedings on original or renewal applications for a license will be conducted as informal adjudicative proceedings. All proceedings on original or renewal applications for certification of a school, instructor, or course will be conducted as informal adjudicative proceedings.

209.2.5. Any application form which is filled out and submitted to the Division for a license or renewal of a license shall be deemed a

request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46b-1, et seq.

209.2.6. Within a reasonable time after receipt of an application, the Division shall:

(a) issue and mail a license to the applicant, which shall be deemed notification that the application is granted conditionally subject to the outcome of the criminal background check;

(b) notify the applicant that the application is incomplete or that further information is needed;

(c) notify the applicant that a hearing shall be scheduled before the Utah Residential Mortgage Regulatory Commission; or

(d) notify the applicant that the application is denied, and, if the proceeding is one in which a hearing is permitted, that ~~he~~the applicant may request a hearing to challenge the denial.

209.2.7. Other Requests for Agency Action. All other requests for agency action shall be in writing and signed by the requestor, and shall contain the following:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date of mailing of the request for agency action;

(d) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(e) a statement of the relief or action sought from the Division; and

(f) a statement of the facts and reasons forming the basis for relief or agency action.

209.2.8. Within a reasonable time after receipt of a request for agency action other than an application for an original or renewed license, the Division shall:

(a) notify the requestor in writing that the request is granted;

(b) notify the requestor that the request is incomplete or that further information is needed before the Division is able to make a determination on the request;

(c) notify the requestor that the Division does not have the legal authority or jurisdiction to grant the relief requested or the action sought; or

(d) notify the requestor that the request is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

209.2.9. A complaint against a licensee requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46-1, et seq.

#### **R162-209-3. Hearings Not Required.**

A hearing is not required and will not be held in the following informal adjudicative proceedings:

(a) The issuance of an original or renewed license when the application has been approved by the Division;

(b) The issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the Division;

(c) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division; ~~(e)~~

~~(e)~~(d) The denial of an application for original or renewed license on the ground that it is incomplete[-];

(e) The denial of an application for original or renewed school certification, instructor certification, or course certification on the ground that it does not comply with the requirements of Sections R162-208.9, R162-210.2, R162-210.5, or R162-210.6; or

(f) All proceedings on an application for an exemption from the continuing education requirement.

#### **R162-209-4. Hearings Permitted.**

209.4.1. An informal post-revocation hearing following the revocation of a license pursuant to Utah Code Section 61-2c-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held only if requested in writing by the person within 30 days from the date the Division's order revoking the license was mailed.

#### **R162-209-5. Procedures for Hearing in Informal Adjudicative Proceedings.**

209.5.1. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for a license or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of the date, time, and place scheduled for the hearing at least ten days prior to the hearing.

209.5.2. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.

All parties shall have access to the Division's files and all materials and information gathered in any investigation to the extent permitted by law.

209.5.3. Intervention is prohibited.

209.5.4. Hearings shall be open to all parties, except that a hearing on an applicant's fitness for a license shall be conducted in a closed session which is not open to the public. The parties named in the notice of agency action or the request for agency action may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

209.5.5. Within a reasonable time after the hearing, the presiding officer shall cause to be issued and sent to the parties a signed order based on the facts appearing in the agency's files and on the facts presented in evidence at the hearing. The order shall state the decision and the reasons therefor and a notice of the right of administrative review and judicial review available to the parties including applicable time limits.

**KEY: residential mortgage loan origination**  
[~~April 12,~~ 2004  
63-46b-4



## Commerce, Real Estate

# R162-210

## Certification of Prelicensing Education Providers

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27405  
FILED: 09/02/2004, 17:21

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** S.B. 178 (2004 General Session) requires the Division to certify the providers of prelicensing education for mortgage licensees. (DAR NOTE: S.B. 178 is found at UT L 2004 Ch 297, and was effective 05/03/2004.)

**SUMMARY OF THE RULE OR CHANGE:** This proposed new rule provides procedures and criteria for the certification by the Division of prelicensing mortgage education schools and instructors, and specifies standards of conduct for them once they are certified.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 61-2c-103(6)

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None, except that the Division of Real Estate will incur costs in carrying out the prelicensing education certification. However, these costs are attributable to S.B. 178 (2004 General Session), which mandates this function, and not to the rules implementing the certification process.

❖ **LOCAL GOVERNMENTS:** None--Local government is not affected by prelicensing education for mortgage licensees or by the process for certifying the providers of that education.

❖ **OTHER PERSONS:** The only other persons who are affected by the certification of mortgage prelicensing education providers are those education providers. However, any cost or savings to the education providers from the certification process is attributable to S.B. 178 (2004 General Session) and not to these rules implementing the education certification requirements of S.B. 178.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Any cost or savings to the education providers who must now go through a certification process is attributable to S.B. 178 (2004 General Session) and not to these rules implementing the education certification requirements of S.B. 178.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing regarding certification of prelicensing education providers appears to create no fiscal impact to businesses beyond those already anticipated by the Legislature's passage of S.B. 178.

**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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Dexter Bell, Director

**R162. Commerce, Real Estate.**

**R162-210. Certification of Prelicensing Education Providers.**  
**R162-210-1. Definitions.**

210.1.1 For the purposes of this rule, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized mortgage organization, any Utah mortgage organization, or any local mortgage organization which has been approved by the Utah Residential Mortgage Regulatory Commission; and

d) Any proprietary mortgage education school.

210.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors.

210.1.3 "Distance Education" is defined as education 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.

**R162-210-2. Application for School Certification.**

210.2.1 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division. The application must include the non-refundable application fee and the following information which will be used in determining the school's eligibility for approval:

(a) Name, phone number and address of the school, school director, and all owners of the school;

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

(c) A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time. The curriculum must include all of the topics set forth in the Standard Curriculum approved by the Utah Residential Mortgage Regulatory Commission and the Division. A school may alter the sequence of presentation of the required topics, and may add topics in addition to those required by the Standard Curriculum;

(d) A list of each certified instructor the school intends to use and the instructor certification number which has been issued by the Division. A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division the academic training or experience qualifying him to teach the course;

(e) An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method;

(f) A list of the titles, authors and publishers of all required textbooks. All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline;

(g) A schedule of the days, times and locations of classes;

(h) 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; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy. The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school;" and

(i) Any other information as the Division may require.

**R162-210-3. School Certification and Renewal.**

210.3.1 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. A school certification will expire 24 months from the date of issuance. A school shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

**R162-210-4. Rules of Conduct for Certified Schools.**

210.4.1 A school shall teach the approved course of study as outlined in the Standard Course Outline approved by the Utah Residential Mortgage Regulatory Commission.

210.4.2 A school shall require each student to attend the required number of hours.

210.4.3 A school shall maintain a record of each student's attendance for a minimum of five years after enrollment.

210.4.4 A school shall not accept a student for a number of hours that is less than the full prelicensing curriculum without first having a written statement from the Division indicating the exact number of hours that an applicant for licensure by reciprocity is required by the Division to complete.

210.4.5 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 in its advertising. School advertising and public notices shall not denigrate the mortgage profession and shall not make disparaging remarks about a competitor's services or methods of operation.

210.4.6 Guest Lecturers. No more than 20% of the required prelicensing education hours may be provided by guest lecturers. Guest lecturers shall be experts in the field on which they provide instruction. Prior to using any guest lecturer, a certified school shall provide to the Division the name of the guest lecturer and a resume which defines the knowledge and expertise of the guest lecturer, or other evidence of professional qualifications of the guest lecturer.

210.4.7 Minimum class time. A school shall not give a student credit for more credit hours of education than the student has actually completed. A credit hour is defined as 50 minutes of instruction within a 60 minute time period. A 10 minute break will be given for each 50 minutes of instruction.

210.4.8 Maximum class hours per day. Education credit will be limited to a maximum of eight credit hours per day.

210.4.9 Limitation on Non-lecture Methods of Instruction. Absent special approval from the Division: (a) Non-lecture methods of instruction will be limited to 50% of the total credit hours of the prelicensing curriculum; (b) Non-lecture methods of instruction will have an accompanying workbook for the student to complete during the instruction. The schools shall submit copies of the workbooks to the Division prior to using a non-lecture method of instruction; and (c) A school must have a certified instructor available to answer student questions within 48 hours after a non-lecture method of instruction has been used.

210.4.10 Proof of Course Integrity for Distance Education Courses. Distance education courses will be reviewed on a case by case basis and will be approved only if, in the opinion of the Division, assurance of the following can be provided: a) There is a method to insure that the person actually completing the course is the student who is to receive credit for the course; b) The course provides no fewer hours of actual instruction than the number of credit hours that will be granted for the course; and c) There is a method to insure that the student comprehends the material.

210.4.11 Challenge by Examination. A student cannot challenge a course or any part of a course of study by examination in lieu of attendance at the course.

210.4.12 College Credit Hour Equivalents. A college or a university that provides Division-approved prelicensing education courses may schedule those courses within its regular quarter or semester schedule. A college quarter hour credit is the equivalent of 10 classroom hours of prelicensing education, and a college semester hour credit is the equivalent of 15 classroom hours of prelicensing education.

210.4.13 Within 15 calendar days after the occurrence of any material change in the information provided in the school's application for certification, the school shall give the Division written notice of that change.

210.4.14 A school shall not attempt by any means to obtain or to use in its educational offerings the questions from the prelicensing examination unless the questions have been dropped from the current bank of exam questions.

210.4.15 A school shall not give any valuable consideration to an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to the school, nor shall a school accept valuable consideration from an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to a licensed mortgage entity.

210.4.16 Licensed mortgage entities may be permitted by a school to solicit prospective mortgage officers at the school, provided that no solicitation may be made during the class time or the 10-minute breaks that are permitted during every hour of instruction. Such solicitation may be made only after the regularly scheduled class time has concluded. No student may be required to attend any such solicitation.

210.4.17 A school shall use only certified instructors or guest lecturers. The school shall notify the Division about which class sessions the guest lecturers will teach.

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

210.4.19 School directors shall provide the instructor for each course with the required content outline for the course and shall assure that the required subject matter has been taught.

210.4.20 Disclosure Requirements Regarding Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending criminal charges.

210.4.20.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating that: a) a student with a criminal history may not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Residential Mortgage Regulatory Commission and the Director of the Division of Real Estate to obtain approval to license in light of the criminal history, and there is no guarantee that such an applicant will be approved; and c) all applicants for licensure will be required to submit to the Division with their applications fingerprint cards that will be used in criminal background checks.

210.4.20.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 210.4.20.1 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of two years following the date upon which the student completes the pre-licensing course.

#### **RI62-210-5. Instructor Application for Certification.**

210.5.1 An instructor shall not teach a prelicensing course by himself without having been certified by the Division prior to teaching the course. Each applicant for certification as a prelicensing instructor shall make application for approval on the form required by the Division.

210.5.2 The applicant for instructor certification to teach Mortgage Officer prelicensing courses shall provide:

(a) Evidence of a minimum educational level of graduation from high school or its equivalent;

(b) Evidence of a minimum of five years of experience in the residential mortgage industry within the past ten years, or evidence of having completed appropriate college-level courses specific to the topic proposed to be taught;

(c) Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Instructor Development Workshops totaling at least two days in length; and

(d) Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught.

210.5.3 Lending Manager Prelicensing Courses. In addition to the requirements of Section 210.5.2, an applicant for certification to teach the following specific Lending Manager prelicensing courses shall have experience as follows:

210.5.3.1 Management of a Residential Mortgage Loan Office. An applicant for certification to teach office management courses must have at least two years practical experience in managing an office that engaged in the business of residential mortgage loans.

210.5.3.2 Mortgage Lending Law. An applicant to teach mortgage lending law courses must be a current member of the Utah Bar Association or have graduated from an American Bar Association accredited law school, and must have at least two years practical experience in the field of real estate law.

210.5.3.3 Advanced Appraisal. An applicant to teach advanced appraisal courses must be a State-Certified appraiser and must hold an MAI designation or equivalent designation. The

instructor applicant must have at least two years practical experience in appraising.

210.5.3.4 Advanced Finance. An applicant to teach advanced finance courses must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

210.5.4 Special Circumstances. Instructor applicants who cannot meet the requirements of Section 210.5.2, but who believe they are qualified to be certified as instructors, may petition the Utah Residential Mortgage Regulatory Commission on an individual basis for evaluation and approval of their qualifications as being substantially equivalent to those required for instructor certification.

#### **R162-210-6. Instructor Certification and Renewal.**

210.6.1. Upon approval by the Division, an instructor applicant will be issued a certification that expires twenty-four months following certification. An instructor shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

210.6.2. As a conditions of renewal of certification, the applicant shall include the following with the application for renewal:

(a) Proof of having taught at least 20 hours of in-class instruction in a certified mortgage education course during the preceding two years;

(b) Proof of attendance at an instructor development workshop sponsored by the Division during the preceding two years; and

(c) Proof of successful completion of 12 hours of live education courses taken in real estate financing related subjects;

210.6.3 A renewed certification will be issued for two full calendar years, expiring on December 31 of the second calendar year.

210.6.4 If an application for renewal of instructor certification, including all required fees and documentation, is not received prior to the expiration date of the current instructor certification, the instructor certification shall expire.

210.6.4.1 When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date of the certification upon payment of a non-refundable late fee in addition to completion of the requirements for a timely renewal.

210.6.4.2 After the 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 residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply as for an original certification.

#### **R162-210-7. Determining Fitness for Certification.**

210.7.1 In order to qualify for school certification, all school directors and all owners of the school must meet the criteria of honesty, integrity, truthfulness, reputation, and competency. In order to qualify for instructor certification, all instructors must meet the criteria of good moral character, honesty, integrity, truthfulness, reputation, and competency.

210.7.2 The determination of whether a person possesses these qualifications will be made by the Division, with the concurrence of the Commission. In determining fitness for certification, the Division and Commission may consider various factors, including:

(a) whether the person has had a license to practice in the mortgage profession, or any other regulated profession or occupation denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;

(b) whether the person has been permitted to resign or surrender a mortgage license or any other professional license or has ever allowed a license to expire while the applicant was under investigation, or while action was pending against the applicant by a mortgage licensing or any other regulatory agency;

(c) whether any action is pending against the person by any mortgage licensing or other regulatory agency;

(d) whether the person is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony;

(e) the circumstances that led to any criminal convictions;

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

(g) whether the person has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;

(h) whether a civil judgment has ever been entered against the person based on fraud, misrepresentation or deceit, and, if the judgment awarded damages against the person, whether the judgment has been fully satisfied;

(i) whether any restitution ordered by a court in a criminal conviction has been fully satisfied;

(j) whether the probation in a criminal conviction or a licensing action has been completed and fully served;

(k) whether there has been subsequent good conduct on the part of the person;

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

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

(n) whether the individual has been guilty of dishonest conduct in the five years preceding application that would have been ground under Utah law for revocation or suspension of a certification had the individual then been certified;

(o) whether any tax and child support arrearages have been paid; and

(p) whether the individual has demonstrated competency in business subsequent to any part incompetence by the individual in the mortgage loan business.

#### **R162-210-8. Division Evaluation and Monitoring of Courses and Instructors.**

210.8.1 The Division shall cause certified prelicensing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

210.8.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

**KEY: residential mortgage loan origination  
2004  
61-2c-103(6)**



Community and Economic  
Development, Community  
Development, Community Services  
**R202-202-202**  
Opening and Closing Dates for HEAT  
Program

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27418

FILED: 09/10/2004, 16:57

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This proposed amendment changes the opening and closing dates of the Home Energy Assistance Target (HEAT) Program.

**SUMMARY OF THE RULE OR CHANGE:** The entire general population may apply for HEAT assistance between November 1 and April 30.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 9-12-101 through 9-12-105

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The rule change is the result of an internal programmatic decision to facilitate the HEAT application process for all eligible low-income households in Utah. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person. Thus there are no costs or savings to the state.

❖ **LOCAL GOVERNMENTS:** The rule change is the result of an internal programmatic decision to facilitate the HEAT application process for all eligible low-income households in Utah. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person. Thus there are no costs or savings to local government.

❖ **OTHER PERSONS:** The rule change is the result of an internal programmatic decision to facilitate the HEAT application process for all eligible low-income households in Utah. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person. Thus there are no costs or savings to other persons or entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No person or other entity are required to pay any costs to comply with this rule or

to participate in the HEAT Program. All costs are borne by the HEAT Program and as explained in under Other Persons above is 100% federally funded.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no fiscal impacts on businesses associated with this rule.

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

COMMUNITY AND ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT,  
COMMUNITY SERVICES  
Room 500  
324 S STATE ST  
SALT LAKE CITY UT 84111-2388, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Sherm Roquero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at shermr@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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: David Harmer, Executive Director

**R202. Community and Economic Development, Community Development, Community Services.**

**R202-202. Energy Assistance Programs Standards.**

**R202-202-202. Opening and Closing Dates for HEAT Program.**

1. Each November 1, or the first working day thereafter, the HEAT Program opens ~~[for the elderly and disabled. F]~~ for the general population. ~~[the program opens November 15 or the first working day thereafter.]~~

2. The HEAT Program closes the following ~~[March 31]~~ April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

**KEY: energy assistance, residency requirements, opening and closing dates, HEAT**

~~[December 15, 1996]~~ **2004**

**Notice of Continuation June 14, 2002**

**9-12-10**



Community and Economic  
Development, Community  
Development, Community Services  
**R202-203-324**  
Income Deductions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27421

FILED: 09/10/2004, 17:32

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment corrects the language of the rule.

SUMMARY OF THE RULE OR CHANGE: Payments of child support or alimony made directly to a mortgage or car payment are deductible.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-12-101 through 9-12-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This is an internal programmatic correction to the rule. No cost is associated with this change. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to the state.

❖ LOCAL GOVERNMENTS: This is an internal programmatic correction to the rule. No cost is associated with this change. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to local government.

❖ OTHER PERSONS: This is an internal programmatic correction to the rule. No cost is associated with this change. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person or other entity are required to pay any costs to comply with this rule or to participate in the HEAT Program. All costs are borne by the HEAT Program and as explained under Other Persons above it is 100% federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses associated with this rule.

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

COMMUNITY AND ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT,  
COMMUNITY SERVICES  
Room 500  
324 S STATE ST  
SALT LAKE CITY UT 84111-2388, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sherm Roquero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at [shermr@utah.gov](mailto:shermr@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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: David Harmer, Executive Director

**R202. Community and Economic Development, Community Development, Community Services.**

**R202-203. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.**

**R202-203-324. Income Deductions.**

1. Medical

A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

a. The client must verify the payment was made directly to a medical provider in the month prior to the month of application and that they will not be reimbursed by a third party.

b. Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

2. Child Support and Alimony

a. A deduction for child support and alimony payments will be allowed when those payments were actually made by a member of the household during the same time period as the income being counted.

b. The client must verify the payment was actually made directly to the custodial adult or through the court.

c. Payments in lieu of child support and alimony, including car payments or mortgage payments, are ~~not~~ deductible.

**KEY: energy assistance, self-employment income, income eligibility, payment determination**

**[1994]2004**

**Notice of Continuation June 14, 2002**

**9-12-10**



Community and Economic  
Development, Community  
Development, Community Services  
**R202-203-328**  
Self-Employment Income

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27419

FILED: 09/10/2004, 17:09

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment includes the previous year's tax return as proof of self-employment income.

SUMMARY OF THE RULE OR CHANGE: The previous year's tax return information may be used by an applicant for Home Energy Assistance Target (HEAT) program assistance as proof of their income.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-12-101 through 9-12-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The rule change is the result of an internal programmatic change to facilitate the application process by allowing applicants to use their tax return as proof of self-employment income. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to the state.

❖ LOCAL GOVERNMENTS: The rule change is the result of an internal programmatic change to facilitate the application process by allowing applicants to use their tax return as proof of self-employment income. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to local government.

❖ OTHER PERSONS: The rule change is the result of an internal programmatic change to facilitate the application process by allowing applicants to use their tax return as proof of self-employment income. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person or other entity are required to pay any costs to comply with this rule or

to participate in the HEAT Program. All costs are borne by the HEAT Program and as explained under Other Persons above is 100% federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses associated with this rule.

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

COMMUNITY AND ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT,  
COMMUNITY SERVICES  
Room 500  
324 S STATE ST  
SALT LAKE CITY UT 84111-2388, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sherm Roquero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at shermr@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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: David Harmer, Executive Director

**R202. Community and Economic Development, Community Development, Community Services.**

**R202-203. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.**

**R202-203-328. Self-Employment Income.**

1. A self-employed person actively earns income directly from their own business, trade, or profession.

2. Self-employment income will be determined by using the previous year's tax return or as follows:

- a. All gross self-employment income is counted.
  - i. Capital gains will be included.
  - ii. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.
    - b. The cost of doing business will be deducted.
      - i. Allowable business costs include:
        - A. labor;
        - B. stock;
        - C. raw materials;
        - D. seed and fertilizer;
        - E. interest paid toward the purchase of income producing property;
        - F. insurance premiums;
        - G. taxes paid on income producing property;
      - ii. Transportation costs will be allowed only if the person must move from place to place in the course of business.



iii. The following items will not be allowed as business expenses:

- A. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods.
- B. Net losses from previous periods.
- C. Federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses.
- D. Depreciation.

**KEY:** energy assistance, self-employment income, income eligibility, payment determination

~~1994~~2004

Notice of Continuation June 14, 2002  
9-12-10

▼ ————— ▼

## Community and Economic Development, Community Development, Community Services **R202-207-702** Records Management

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27420

FILED: 09/10/2004, 17:20

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This proposed amendment changes the agency's name to the State HEAT Office (SHO). HEAT refers to the Home Energy Assistance Target program.

**SUMMARY OF THE RULE OR CHANGE:** This amendment changes the responsible agency's name from SCSO (State Community Services Office) to the State HEAT Office (SHO).

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 9-12-101 to 9-12-105

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** This change is merely making it known that, due to Departmental reorganization, the responsible agency for the HEAT Program is the State HEAT Office. No cost is associated with this change. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to the state.

❖ **LOCAL GOVERNMENTS:** This change is merely making it known that, due to Departmental reorganization, the responsible agency for the HEAT Program is the State HEAT Office. No cost is associated with this change. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally

funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to local government.

❖ **OTHER PERSONS:** This change is merely making it known that, due to Departmental reorganization, the responsible agency for the HEAT Program is the State HEAT Office. No cost is associated with this change. HEAT is a federal program administered by the U.S. Department of Health and Human Services known as the Low Income Home Energy Assistance Program (LIHEAP). It is 100% federally funded and requires no state or local government funds; nor does it require funds from any other person or entity. Thus there are no cost or savings to other persons or entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No person or other entity is required to pay any costs to comply with this rule or to participate in the HEAT Program. All costs are borne by the HEAT Program and as explained under Other Persons above is 100% federally funded.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no fiscal impacts on businesses associated with this rule.

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

COMMUNITY AND ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT,  
COMMUNITY SERVICES  
Room 500  
324 S STATE ST  
SALT LAKE CITY UT 84111-2388, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
Sherm Roquero at the above address, by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at [shermr@utah.gov](mailto:shermr@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 11/01/2004.**

**THIS RULE MAY BECOME EFFECTIVE ON:** 11/02/2004

**AUTHORIZED BY:** David Harmer, Executive Director

**R202. Community and Economic Development, Community Development, Community Services.**

**R202-207. Energy Assistance: Records and Benefit Management. R202-207-702. Records Management.**

1. Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office. Every person who completes an application shall have a case record.

2. HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the ~~[SCSO]~~State HEAT Office (SHO) or in accordance with the Archives Schedule.

**KEY: energy assistance, benefits, government documents, state HEAT office records**  
**[1988]2004**  
**Notice of Continuation June 14, 2002**  
**9-12-10**

▼ ————— ▼

## Corrections, Administration

# R251-113

## Distribution of Reimbursement from the Inmate Costs Reimbursement Program

### NOTICE OF PROPOSED RULE

(Amendment)  
 DAR FILE NO.: 27416  
 FILED: 09/09/2004, 14:47

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendments to this rule serve the purpose of clarifying the statutes and explaining the procedures for handling fund shortfall.

**SUMMARY OF THE RULE OR CHANGE:** The term "fund" was defined for clarification of the monies allocated by the Legislature. A statement was included to include the approval of the new reimbursement rate before implementation. This statement was included for clarification and emphasis of the statute. Notification and disbursement procedures for handling a projected shortfall were also included in the amendments.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 64-13c-101, 64-13c-201, 64-13c-301 through 64-13c-304, and 64-13c-401

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The nonlapsing funds for this program are appropriated from the Legislature. The program monies will be spent within this appropriated amount. Therefore, there will be no cost or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** The nonlapsing funds for this program are appropriated from the Legislature. The program monies will be spent within this appropriated amount. Therefore, there will be no cost or savings to local government.
- ❖ **OTHER PERSONS:** The nonlapsing funds for this program are appropriated from the Legislature. The program monies will be spent within this appropriated amount. Therefore, there will be no cost or savings to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The nonlapsing funds for this program are appropriated from the Legislature. The program monies will be spent within this appropriated amount. Therefore, there will be no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no fiscal impact on businesses.

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

CORRECTIONS  
 ADMINISTRATION  
 14717 S MINUTEMAN DR  
 DRAPER UT 84020-9549, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ginny L Duncan or Gary Ogilvie at the above address, by phone at 801-545-5722 or 801-545-5514, by FAX at 801-545-5523 or 801-545-5523, or by Internet E-mail at [gduncan@utah.gov](mailto:gduncan@utah.gov) or [gogilvie@utah.gov](mailto:gogilvie@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 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Scott V. Carver, Executive Director (Acting)

### **R251. Corrections, Administration.**

#### **R251-113. Distribution of Reimbursement ~~from~~ for the Felony Probation Inmate Costs Reimbursement Program/Fund.**

##### **R251-113-1. Authority and Purpose.**

(1) This rule is provided in accordance with Section 64-13c-301, et seq.

(2) As required by Subsection 64-13c-303(1)(b), the purpose of this rule is to establish procedures for the distribution of reimbursement from the program.

(3) As required by legislative intent language from the General Session 2004, Senate Bill SB-1, Jail Reimbursement, lines 322-334.

##### **R251-113-2. Definitions.**

In addition to terms defined in Section 64-13c-101,

(1) "Contract State Inmate" means an inmate who has been sentenced to the Utah Department of Corrections and at the pleasure of the Division of Institutional Operations (DIO) is selected to complete all or a portion of their court ordered incarceration in a county correctional facility under contract with the UDC.

(2) "Core inmate incarceration costs (Core Rate)" means the county correctional facility's jails direct costs of incarcerating an inmate, including housing, feeding, clothing, and programming. This is also the "single-reimbursement-rate" as provided in Section 64-13c-302. This does not include costs of inmate transportation services or medical care; nor programming for felony probationers.

(3) "Credit for Time Served" means time served in jail prior to judgement, sentence, and commitment.

(4) "Current expenses" means the actual costs of jail salaries, benefits, food, clothing, maintenance, and utilities expended during the most recent budget year.

(5) "Fund" means the monies allocated by the legislature for the Felony Probation Inmate costs (Inmate Costs Reimbursement Program for the current fiscal year).

(6) "Felony Probation Inmate" means a person who may serve a period of time, not to exceed one year in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate, as provided in 77-18-1-(8)(v) Felony Probationer.

~~(4)~~(7) "Transportation cost" means mileage rate, salary and benefit costs of the transporting officer(s) expended during the most recent budget year.

### **R251-113-3. Reimbursement Rates - General.**

Pursuant to Section 64-13c-302:

~~(1) the procedures for setting the rate will be followed as written in the statute; the meeting of the committee will take place prior to July 1 of each year and after the information is gathered from the counties.~~

~~(4)~~(2) the ~~[Utah Sheriff's Association and the Department]~~Rate Setting Committee as outlined in 64-13c-302 shall negotiate a single reimbursement rate, applicable to all counties, which shall consist of daily core inmate incarceration costs~~;~~and shall be called the "Core Rate";

~~(2)~~(3) each county shall negotiate directly with the Department to establish appropriate reimbursement rates for the providing of transportation services and medical care for inmates housed under Section 64-13c-201, including ~~F[f]~~elony ~~P[p]~~robationers committed to a county ~~[correctional facility]~~jail;

~~(3)~~(4) the three parts of the setting reimbursement rate are:

(a) the core rate~~[inmate incarceration costs];~~

(b) county medical costs; and

(c) county transportation costs~~;~~and

~~(4) the counties shall be eligible to be reimbursed amounts that reflect:~~

~~(a) the core inmate incarceration cost for contract state prison inmates; or~~

~~(b) the core inmate incarceration cost plus medical and transportation costs for inmates sentenced under a condition of probation.]~~

### **R251-113-4. County Information Requirement.**

(1) On or before the first Friday in March, each county shall provide the Department with budget expenditure information covering the most recent full County Fiscal Year ending on December 31st of each year:

(a) the full costs and expenses required to operate the jail for the current year;

(b) the cost of medical care provided to all inmates housed in the jail for the current year;

(c) the cost of transportation services provided during the current year; and

(d) the number of inmates and number of "inmate-days" for:

(i) the number of state-contract inmates;

(ii) the condition-of-probation inmates;

(iii) the number of all other county inmates, including all other inmates within the facility not already listed;

(iv) the number of federal inmates;

(v) the number of electronically monitored inmates; and

(vi) the number of total inmates.

(2) The Department may audit the information received by each county as necessary.

### **R251-113-5. Computation of Reimbursement Rates.**

(1) A single core~~[reimbursement]~~ rate shall be used as the basis for all counties as the rate for cost-recovery of housing state ~~[prison]~~ inmates.

(a) It will be computed by taking a list of the total information received from all counties, categorized as total inmate days and total current expenses; and then taking

(b) total current expenses, which shall then be divided by the total inmate days, resulting in a computed core rate.

(c) This computed core rate shall be used as the single reimbursement rate for all counties housing contract state prison inmates during the year whether the inmate is a Contract State Inmate or Felony Probation Inmate.

(2) In addition, a separate ~~["core"]~~county rate shall be calculated to reflect medical and transportation expenses incurred by each county. ]

~~(a)]~~ This separate ~~[core]~~county rate will be computed by:

~~(a) taking the total medical costs for each county and dividing that total by the inmate days of each county, minus any contract prisoner; and~~

~~(b) taking the total transportation cost for each county and dividing that total by the inmate days for each county minus any contract prisoners. [totaling the information received from all counties which are categorized as total inmate days and total medical and transportation costs, and by dividing the total medical and transportation costs by the total inmate days.~~

~~(b) This calculated separate core rate for medical and transportation for each county shall then be added to the "single" reimbursement rate for counties housing inmates sentenced under a condition of probation.~~

~~(e) These two rates shall be considered as the total amount eligible for reimbursement to a county.]~~

### **R251-113-6. Payment for Condition of Probation Inmates.**

(1) ~~The fund may~~~~[Each county shall be eligible to be]~~ reimburse~~d]~~ each county at seventy percent of the [single]core reimbursement rate established by the Rate Setting Committee and approved by the Legislature.~~[plus the individual county rates established for medical and transportation.]~~

(2) If funds permit it is the intent of the Legislature for the Department to reimburse county rates related to transportation and/or medical care of felony probation inmates sentenced to a county jail from the fund up to the rate of seventy percent. The medical and transportation rate for each county may be calculated and reimbursed at different rates.

~~(2)~~(3) "Credit for Time Served" is not eligible for reimbursement. Reimbursement can only be made beginning on the first day of incarceration after sentencing.

(4) Counties shall not be eligible for reimbursement for housing felony probation inmates who have been ordered by the court to reimburse the county for the cost associated with their incarceration.

### **R251-113-7. Notice of Fund Shortfall.**

(1) Should it be projected that the appropriated fund will be spent prior to the end of the fiscal year, the Department shall notify the Legislative Fiscal Analyst Office in writing. The report will explain the factors used to determine the shortfall.

(2) The Department shall also notify each participating county jail that the fund will be short.

(3) If the fund falls short of being able to cover the core rate the department shall collect all billings against the fund and hold until the end of the fiscal year. At that time, the remaining funds shall be dispersed at an equal percentage across all participating counties.

**KEY: county jails, reimbursement**  
~~October 17, 2000~~ 2004  
 64-13-303

## Education, Administration

# R277-451

## The State School Building Program

### NOTICE OF PROPOSED RULE

(Amendment)  
 DAR FILE NO.: 27422  
 FILED: 09/13/2004, 13:31

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to allow for the administration of the statutorily created enrollment growth component of the Capital Outlay Foundation Program.

SUMMARY OF THE RULE OR CHANGE: The proposed changes include adding the "Enrollment Growth Program" definition, procedures for school districts to use when applying for Enrollment Growth Program funds, a distribution of funds section that describes how funds are distributed, and new language in the Capital Outlay Loan Program section (Section R277-451-3) of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53A-21-103 and 53A-21-103.5

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated cost or savings to state budget. The funds for this program were appropriated by the Legislature to the Utah State Office of Education specifically for this purpose.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to school districts. School districts may qualify for these funds, but there is no expense to districts though this money becomes available to school districts only if they qualify.
- ❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. This program provides funds to school districts, not individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This program provides funds to school districts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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@uoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

#### R277. Education, Administration.

#### R277-451. The State School Building Program.

#### R277-451-1. Definitions.

[H]A. "Accounts receivable" means any amount due the Board from a school district for which payment has not been received by the Board.

B. "ADM" means Average Daily Membership of students.

[D]C. "Assessed valuation" means the assessed value of real property certified by the State Tax Commission to the Board each year.

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

[G]E. "Capital Outlay Foundation Program" means a program that provides a minimum dollar generation guarantee, per ADM, for every school district willing to levy a tax of .002400 per dollar of taxable value on real property.

[F]F. "Derived assessed valuation" means current collections of tax levy (no prior year penalties or redemptions) divided by the same year tax rates.

G. "Enrollment Growth Program" means a program that provides additional support to those school districts which are experiencing the most pressing needs for school facilities due to rapid growth.

[F]H. "Fiscal year (FY)" means the twelve month period from July 1 through June 30 during which state funds are distributed.

[F]I. "Foundation level" means the guaranteed pro-rated amount per ADM to the extent of funds available distributed to school districts by the Board.

[G]J. "Loan" means a transaction which takes money from a Board account and places it in a school district account with the full legal intention by a school district that it be repaid to the account from which it was taken.

[F]K. "Superintendent" means the State Superintendent of Public Instruction.

[K]L. "USOE" means the Utah State Office of Education.

**R277-451-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, ~~[Sections 53A-19-101 through 105 which direct local school boards to develop budgets, provide for appropriate plans to be filed with the Superintendent and maintain reserves consistent with the law; Sections 53A-21-102 and 53A-21-104 which direct the Board to provide financial assistance to school districts to meet critical school building and debt service needs and provide standards toward that end]~~Section 53A-21-103 which requires that the Board to adopt rules regarding qualifications for participation in the foundation program and distribution of funds for the program, Section 53A-21-103.5 which requires the Board to adopt rules regarding qualifications for participation in the Enrollment Growth Program and for distribution of funds for the program, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the eligibility requirements and the procedures for distributing funds appropriated for the capital outlay foundation program and enrollment growth program as well as for providing short-term loans to school districts for capital outlay projects in school building construction and renovation.

**R277-451-3. Capital Outlay Foundation Program.**

A. A school district may receive state school building funds under the capital outlay foundation program established in Section 53A-21-102(1) if the amount raised by levying a tax rate of .002400 does not generate revenues above the foundation level established per ADM when the legislative appropriation is entered into the formula.

B. To qualify ~~[for]~~to receive 100 percent of the capital outlay foundation funds available to a school district, a school district shall levy a property tax rate ~~[up to]~~of at least 0.002400 designated specifically for capital outlay and debt service:

(1) school districts levying less than the full 0.002400 tax rate for capital outlay and debt service shall receive proportional funding under the capital foundation program based upon the percentage of the 0.002400 tax rate levied by the school district;

(2) the amount of capital foundation funds to which a school district would otherwise be entitled under the Capital Outlay Foundation program may not be reduced as a consequence of changes in the certified tax rate under Section 59-2-924 due to changes in property valuation for a period of two tax years from the effective date of any such change in the certified tax rate.

C. The USOE shall support the foundation program to assist the qualifying school district in reaching the foundation level.

**R277-451-4. Enrollment Growth Program.**

A. A school district may receive enrollment growth program funds under Section 53A-21-103.5 for the following purposes:

(1) to fund general obligation bond principal and interest costs;

(2) to fund construction;

(3) to fund facilities renovation; and

(4) to fund other capital project needs as approved.

B. In order to qualify for monies under the Enrollment Growth Program, a school district shall be a recipient of monies distributed under the Capital Outlay Foundation Program and shall have had an average net increase in student enrollment over the previous three years from the year in which money is requested under the Enrollment Growth Program.

C. If a school district was or is not a recipient of Capital Outlay Foundation Program monies in FY 2003-04 or FY 2004-05, the school district may qualify for monies under the Enrollment Growth Program if the school district received Capital Outlay Foundation Program monies in FY 2002-03.

D. School districts receive Enrollment Growth Program monies in the same proportion that the school district's three-year average net increased enrollment bears to the total three-year net increased enrollment of all the school districts which qualify to receive funds under the Enrollment Growth Program.

**R277-451-5. When Funds are Distributed.**

Capital Outlay Foundation and Enrollment Growth Program funds shall be distributed through the monthly electronic bank transfer to school districts as early as possible after the data elements are received from school districts and entered into the formulae, typically before the February bank transfer.

**R277-451-[4]6. Capital Outlay Loan Program.**

A. A school district may receive capital outlay loan program funds under Section 53A-21-102 which establishes a capital outlay loan program to provide short-term ~~[help]~~assistance to school districts, for a period not to exceed five years, for school building construction and renovation.

B. To be a priority qualifier for the capital outlay loan program, a school district shall ~~[meet]~~satisfy all of the following ~~[requirements]~~criteria:

(1) demonstrate an ability and commitment as demonstrated by a local board vote to set the levy at the rate needed to repay the loan within the time period prescribed by the loan agreement; and

(2) levy a tax rate for capital outlay and debt service above the state average; and

(3) demonstrate a school district need that is better met through the loan fund than through more traditional means for providing school building construction or renovation or both.

C. If a school district does not meet the criteria for a priority qualifier and the needs of the priority qualifiers are met, the loan application of school districts not meeting this criteri~~[on]~~a may be considered, if the school district commits to levying at or above the state average for the next tax year. In the case of a natural disaster or other compelling emergency, this requirement may be waived by the Superintendent.

D. A school district applying for a short term loan under this rule shall make a formal application which includes:

(1) the emergency condition or the condition that exists that would be better met through the loan fund rather than through more traditional means for providing school building construction or renovation or both;

(2) the amount of loan sought;

(3) the proposed repayment schedule, not to exceed five years;

(4) the history of the last five years of loans or special supplementary funds received by the school district from the USOE;

(5) minutes of the local board meeting recording the affirmative vote to levy the needed tax; and

(6) a signed agreement that if the school district should default on a loan payment, the Superintendent may deduct the loan payment and added interest from the calculated per school district state distribution after 90 days.

E. The loan request and repayment conditions shall be approved by the Superintendent ~~[or his designee]~~after receiving

recommendations from a loan approval committee, including representatives from state and local education entities.

F. If the loan approval committee recommends approval of the loan application, the committee's recommendations shall include:

- (1) the recommendation amount of the loan;
- (2) the repayment schedule; and
- (3) the interest rate to be charged. It is the intent of the Board that the interest rate be based upon the Delphis Hanover Corp. triple A interest rate less 1/2 percent, as quoted 30 days before the loan date and dependent upon the term of the loan.

**KEY: educational facilities, education finance**

~~[August 1, 2001]~~2004

Notice of Continuation September 7, 2004

Art X Sec 3

~~53A-19-101 through 105~~

~~53A-21-102~~

~~53A-21-104~~53A-21-103

~~53A-21-103.5~~

53A-1-401(3)

59-2-924



## Education, Administration

# R277-746

## Driver Education Programs for Utah Schools

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27423

FILED: 09/13/2004, 13:32

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to reflect the revision date change made to the Driver Education for Utah High Schools Manual.

**SUMMARY OF THE RULE OR CHANGE:** The manual revision date is changed from 1999 to 2004.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-13-201(4)

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** There are no anticipated cost or savings to state budget. The amendment only reflects a revision date change to the Driver Education for Utah High Schools Manual.
- ❖ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local government. The amendment only reflects a revision date change to the Driver Education for Utah High Schools Manual.
- ❖ **OTHER PERSONS:** There are no anticipated cost or savings to other persons. The amendment only reflects a revision date change to the Driver Education for Utah High Schools Manual.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The amendment only

reflects a revision date change to the Driver Education for Utah High Schools Manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact to businesses. Patti Harrington, State Superintendent of Public Instruction

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

### R277. Education, Administration.

#### R277-746. Driver Education Programs for Utah Schools.

##### R277-746-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "USOE" means the Utah State Office of Education.

##### R277-746-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-13-201(4) which directs the Board to prescribe rules for driver education classes in the public schools and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for local school districts conducting automobile driver education.

##### R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS, Revised, May, [1999]2004, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS, Utah State Office of Education, Revised, May, [1999]2004, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

**KEY: driver education**  
~~July 19, 1999~~2004  
 Notice of Continuation March 12, 2003  
 53A-13-201(4)  
 53A-1-401(3)

▼ ————— ▼

## Environmental Quality, Air Quality **R307-101-2** Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27428

FILED: 09/15/2004, 12:42

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to delete the definition of "Breakdown," which is not needed. Breakdowns are addressed in the reenacted version of Rule R307-107 (see separate filing in this issue). (DAR NOTE: The repeal and reenactment of Rule R307-107 is under DAR No. 27427 in this issue.)

**SUMMARY OF THE RULE OR CHANGE:** This amendment deletes the definition of "breakdown." The subject of breakdowns is now addressed in the reenacted Rule R307-107 (see separate filing in this issue).

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There is no change in costs due to the change in this rule. Any changes in costs are attributable in the reenacted version of Rule R307-107 (see separate filing in this issue).

❖ **LOCAL GOVERNMENTS:** There is no change in costs due to the change in this rule. Any changes in costs are attributable in the reenacted version of Rule R307-107 (see separate filing in this issue).

❖ **OTHER PERSONS:** There is no change in costs due to the change in this rule. Any changes in costs are attributable in the reenacted version of Rule R307-107 (see separate filing in this issue).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no change in costs due to the change in this rule. Any changes in costs are attributable in the reenacted version of Rule R307-107 (see separate filing in this issue).

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no change in costs due to the change in this rule. Any changes in costs are attributable in the reenacted version of Rule R307-107.

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:

Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at 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 11/01/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/21/2004 at 1:30 PM, DEQ building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/02/2004

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

### **R307. Environmental Quality, Air Quality.**

#### **R307-101. General Requirements.**

#### **R307-101-2. Definitions.**

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

.....

"Baseline Date":

(1) Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or R307-405 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or R307-405. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air

Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).]

~~"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307-]~~

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

.....

**KEY: air pollution, definitions**

~~[December 31, 2003]~~2004

Notice of Continuation June 5, 2003

19-2-104



## Environmental Quality, Air Quality **R307-107** General Requirements: Unavoidable Breakdown

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE No.: 27427

FILED: 09/15/2004, 12:41

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose is to update a 25-year-old rule, and to make it consistent with current EPA policy. The EPA policy was issued in 1999. Now that the policy has survived litigation nationally, EPA will not approve future Utah state implementation plans that do not include the policy.

**SUMMARY OF THE RULE OR CHANGE:** A substantive provision in the current rule that is eliminated in the new rule is the allowance, for excess emissions events of 2 hours or more, to report the event within 3 hours if possible, but no later than 18 hours after the beginning of the event. The new rule requires reporting within 3 hours. Additional provisions in the new rule include a list of conditions to be met in order that a source can claim an affirmative defense for an excess emissions event, and additional information that must be reported after an excess emissions event occurs. The following changes are

made from the current rule. The title of the rule is changed from "General Requirements: Unavoidable Breakdown," to "General Requirements: Excess Emissions." The current rule applies to emissions of all pollutants, while the new rule applies to all sources of emissions unless specific emissions limits are included in a specific rule, approval order, or permit.

Under the current rule, excess emissions from a malfunction are not considered to be violations; under the new rule, all excess emissions are considered to be violations unless the source presents an affirmative defense demonstrating that all the conditions specified in the rule have been met. The current rule includes required actions that a source must conduct to minimize the amount of emissions and duration of the event; the new rule includes those actions in the list of affirmative defense items.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-2-104(1)(a), and 19-2-104(1)(c)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** It is difficult to estimate whether costs will change. Under the new rule, the requirement to demonstrate that a breakdown or malfunction is not a violation lies with the source, and that may mean that costs may decline for the state to determine whether or not a violation has occurred. In addition, many sources are covered under 40 CFR part 70, the operating permits program, and their costs are covered by fees rather than by the state General Fund.

❖ **LOCAL GOVERNMENTS:** It is difficult to estimate whether costs will change for local governments that operate sources of air pollution. Under the new rule, the requirements to demonstrate that a breakdown or malfunction is not a violation lies with the source, and that may mean that costs for local government sources increase. On the other hand, there are costs if the new rule is not implemented, because new and revised state implementation and maintenance plans will not be approved by EPA, and there are costs for sources and other citizens if plans cannot be federally approved. Local governments in Weber, Davis, Salt Lake and Utah Counties are required to demonstrate that their long-range transportation plans are in conformity with state implementation and maintenance plans, and are unlikely to be able to make that demonstration unless the plans are regularly updated. Without federal approval of the conformity demonstration, the local governments would be unable to plan for or construct regionally-significant highway or transit projects, and that could have a detrimental effect in costs to their citizens.

❖ **OTHER PERSONS:** It is difficult to estimate whether costs will change for affected persons. There are unknown costs to meet the requirements to demonstrate an affirmative defense, and there will be additional costs to assemble the documentation required to demonstrate an affirmative defense. If the affirmative defense is not complete, then the source will be in violation and that may result in financial or other penalties. Also there are costs if the new rule is not implemented, because new and revised state implementation and maintenance plans will not be approved by EPA and there are costs for sources and for citizens if plans cannot be federally-approved. Local governments in Weber, Davis, Salt



Lake and Utah Counties are required to demonstrate that their long-range transportation plans are in conformity with state implementation and maintenance plans, and are unlikely to be able to make that demonstration unless the plans are regularly updated. Without the conformity demonstration, the local governments would be unable to plan for or construct regionally-significant highway or transit projects, and that could have a detrimental effect in costs to businesses and individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is difficult to estimate whether costs will change for affected persons. There are unknown costs to meet the requirements to demonstrate an affirmative defense, and there will be additional costs to assemble the documentation required to demonstrate an affirmative defense. If the affirmative defense is not complete, then the source will be in violation and that may result in financial or other penalties. Also there are costs if the new rule is not implemented, because new and revised state implementation and maintenance plans will not be approved by EPA and there are costs for sources and for citizens if plans cannot be federally-approved. Local governments in Weber, Davis, Salt Lake and Utah Counties are required to demonstrate that their long-range transportation plans are in conformity with state implementation and maintenance plans, and are unlikely to be able to make that demonstration unless the plans are regularly updated. Without the conformity demonstration, the local governments would be unable to plan for or construct regionally-significant highway or transit projects, and that could have a detrimental effect in costs to businesses and individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There may be increased costs associated with the implementation of this rule, but there are also costs for business if the rule is not implemented.

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:

Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/21/2004 at 1:30 PM, DEQ Building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/02/2004

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

**R307. Environmental Quality, Air Quality.**

~~[R307-107. General Requirements: Unavoidable Breakdown. R307-107-1. Application.~~

~~— R307-107 applies to all regulated pollutants including those for which there are National Ambient Air Quality Standards. Except as otherwise provided in R307-107, emissions resulting from an unavoidable breakdown will not be deemed a violation of these regulations. If excess emissions are predictable, they must be authorized under the variance procedure in R307-102-4. Breakdowns that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered unavoidable breakdown.~~

~~R307-107-2. Reporting.~~

~~— A breakdown for any period longer than 2 hours must be reported to the executive secretary within 3 hours of the beginning of the breakdown if reasonable, but in no case longer than 18 hours after the beginning of the breakdown. During times other than normal office hours, breakdowns for any period longer than 2 hours shall be initially reported to the Environmental Health Emergency Response Coordinator, Telephone (801) 536-4123. Within 7 calendar days of the beginning of any breakdown of longer than 2 hours, a written report shall be submitted to the executive secretary which shall include the cause and nature of the event, estimated quantity of pollutant (total and excess), time of emissions and steps taken to control the emissions and to prevent recurrence. The submittal of such information shall be used by the executive secretary in determining whether a violation has occurred and/or the need of further enforcement action.~~

~~R307-107-3. Penalties.~~

~~— Failure to comply with the reporting procedures of R307-107-2 will constitute a violation of these regulations.~~

~~R307-107-4. Procedures.~~

~~— The owner or operator of an installation suffering an unavoidable breakdown shall assure that emission limitations and visible emission limitations are exceeded for only as short a period of time as reasonable. The owner or operator shall take all reasonable measures which may include but are not limited to the immediate curtailment of production, operations, or activities at all installations of the source if necessary to limit the total aggregate emissions from the source to no greater than the aggregate allowable emissions averaged over the periods provided in the source's approval orders or R307. In the event that production, operations or activities cannot be curtailed so as to so limit the total aggregate emissions without jeopardizing equipment or safety or measures taken would result in even greater excess emissions, the owner or operator of the source shall use the most rapid, reasonable procedure to reduce emissions. The owner or operator of any installation subject to a SIP emission limitation pursuant to these rules shall be deemed to have complied with the provisions of R307-107 if the emission limitation has not been exceeded.~~

**R307-107-5. Violation.**

Failure to comply with curtailment actions required by R307-107-4 will constitute a violation of R307-107.

**R307-107-6. Emissions Standards.**

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

**KEY: air pollution, breakdown\*, excess emissions\***

**September 15, 1998**

**Notice of Continuation June 12, 2003**

**19-2-104]**

**R307-107. General Requirements: Excess Emissions and Reporting.****R307-107-1. Purpose and Definitions.**

(1) The purpose of R307-107 is to establish violations and affirmative defenses for excess emissions caused by malfunctions, scheduled maintenance, startup, or shutdown. Recordkeeping and reporting requirements also are established.

(2) Definitions. The following additional definitions apply to R307-107.

(a) "Affirmative Defense" means, in the context of an excess emissions incident, a response or defense put forward by a source, regarding which the source has the burden of proof, for the purpose of establishing that the incident does not constitute a violation.

(b) "Excess Emissions" means a level, rate or amount of air emissions, including opacity, that exceeds any applicable emission limitation or opacity limit established under statute, rule, approval order, or permit.

(c) "Malfunction" means a sudden failure of a process, process equipment, or air pollution control equipment to operate in a normal or usual manner.

**R307-107-2. Violations and Affirmative Defenses for Excess Emissions Due to Malfunctions, Scheduled Maintenance, Startup, and Shutdown.**

(1) Applicability. R307-107-2 is applicable to all sources except where emission standards, limits, or performance standards for malfunctions, scheduled maintenance, startup, or shutdown are identified in a specific rule, approval order, or permit, to include new source performance standards (NSPS), and national emissions standards for hazardous air pollutants (NESHAPS), or other federal performance standards.

(2) Violations and Affirmative Defense for Malfunctions. Excess emissions due to malfunction shall constitute a violation unless the incident qualifies for an affirmative defense under this subsection, R307-107-2(2). The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction shall have an affirmative defense to a civil, administrative, or other proceeding, other than an action seeking injunctive relief, and is excused from penalties if the owner or operator of the source has demonstrated all of the following.

(a) The excess emissions were caused by a malfunction which was beyond the control of the owner or operator.

(b) The excess emissions did not stem from any activity or event that could have been foreseen, avoided, or planned for, and could not have been avoided by good design, operation, and maintenance consistent with good industry practices.

(c) The air pollution control equipment or processes were maintained and operated in a manner consistent with good practice

for minimizing emissions such as manufacturers' recommendations and general industry adopted practices.

(d) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime, to the extent practicable, were utilized to ensure that such repairs were made as expeditiously as practicable.

(e) The amount and duration of the excess emissions (including any bypass of control equipment) were minimized to the extent practicable during periods of such emissions.

(f) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

(g) All emission-monitoring systems were kept in operation if possible.

(h) The owner or operator's actions in response to the excess emissions were documented by contemporaneous operating logs or other relevant evidence.

(i) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(j) The owner or operator provided notice in accordance with R307-107-3, if required.

(k) The excess emissions did not cause or contribute to an exceedance of the National Ambient Air Quality Standards or the Prevention of Significant Deterioration increments.

(3) Violations and Affirmative Defense for Scheduled Maintenance, Startup or Shutdown. Excess emissions due to scheduled maintenance, startup, or shutdown shall constitute a violation unless the incident qualifies for an affirmative defense under this subsection, R307-107-2(3). If excess emissions occur due to malfunctions during scheduled maintenance, startup, or shutdown, those instances shall be treated as malfunctions subject to subsection (2) above. Otherwise, the owner or operator of a source with emissions in excess of an applicable emission limitation due to scheduled maintenance, startup, or shutdown has an affirmative defense to a civil, administrative, or other proceeding, other than an action seeking injunctive relief, and is excused from penalties if the owner or operator of the source has demonstrated all of the following.

(a) Excess emissions that occurred during scheduled maintenance, startup or shutdown were short and infrequent and could not have been prevented through careful planning and design consistent with good industry practices.

(b) The excess emissions were not part of a recurring pattern indicating inadequate design, operation, or maintenance.

(c) If the excess emissions were caused by an intentional bypass of control equipment, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(d) At all times, the facility was operated in a manner consistent with good practice for minimizing emissions such as manufacturers' recommendations and general industry adopted practices.

(e) The frequency and duration of operation in scheduled maintenance, startup, or shutdown mode were minimized to the extent practicable.

(f) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

(g) All emission monitoring systems were kept in operation if possible.

(h) The owner or operator's actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence.

(i) The owner or operator provided notice in accordance with R307-107-3, if required.

(j) The excess emissions did not cause or contribute to an exceedance of the National Ambient Air Quality Standards or the Prevention of Significant Deterioration increments.

(4) Excess Emissions Determinations. The executive secretary shall determine whether an affirmative defense has been established for excess emissions incidents based on the criteria and information identified in subsections (2) and (3) above. An affirmative defense may, but need not, be established pursuant to a judicial or administrative proceeding.

(5) In cases where an excess emissions incident does not qualify for an affirmative defense, the executive secretary or board may evaluate penalties through the exercise of enforcement discretion based on an assessment of all relevant information and the penalty policy of the board which could result in a determination of no penalties or up to the maximum penalties, depending upon the circumstances.

(6) Nothing in this Section R307-107-2 shall be construed to limit the authority of the Board to seek injunctive relief or to enforce the provisions of the Utah Air Conservation Act, Title 19, Chapter 2, and the rules promulgated under it.

### **R307-107-3. Recording and Reporting Requirements.**

(1) This Section R307-107-3 is applicable to all sources. Recording and reporting requirements in any other rule, approval order, permit, or enforcement order are in addition to the requirements of this R307-107-3. It is acceptable for a source to give a combined notice or file a combined report if by so doing it can comply with both the reporting requirements of this R307-107-3 and other reporting requirements applicable to the source.

(2) The owner or operator of any source shall report to the executive secretary any excess emissions with a duration of two hours or longer. Failure to comply with the following reporting requirements and procedures shall preclude the use of the affirmative defense provisions specified in Section R307-107-2.

(a) Initial Report. The source shall notify the executive secretary by telephone or facsimile within three hours of the time the owner or operator first learns of the occurrence of excess emissions of a duration of two hours or longer. The notification shall include the information listed in subsection (b) below to the extent that is available to the source at the time of the initial report. During times other than normal office hours, excess emissions for any period longer than two hours shall be initially reported to the Utah Department of Environmental Quality 24-hour Answering Service at 801-536-4123.

(b) Detailed Report. In the case of excess emissions with a duration of two hours or longer, the source shall provide the executive secretary with a detailed excess emissions report within seven calendar days of the time the initial report was due. The report shall include the following:

(i) the company name and location, and the identity of each stack or other emission point where the excess emissions occurred;

(ii) the magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(iii) the date, starting time, and duration or expected duration of the excess emissions to include indicating who first identified the excess emissions and when;

(iv) the identity of the equipment from which the excess emissions emanated;

(v) a specific explanation of the cause and nature of the emissions;

(vi) the steps taken to remedy the excess emissions, and the steps taken or planned to prevent the recurrence of the excess emissions;

(vii) the steps that were or are being taken to limit the excess emissions; and

(viii) the steps taken to comply with any applicable procedures governing operations during periods of excess emissions.

(3) Recording. For excess emissions from malfunction, scheduled maintenance, startup or shutdown, the company shall keep the information necessary to demonstrate an affirmative defense under R307-107-2 on-site and available for review for two years after the excess emissions end.

**KEY: air pollution, breakdown, malfunction, excess emissions 2004**

**Notice of Continuation June 12, 2003**

**19-2-104(1)(a)**

**19-2-104(1)(c)**



## Environmental Quality, Air Quality **R307-110-11** Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27429

FILED: 09/15/2004, 12:42

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a new subsection IX.B.6, Maintenance Plan for Sulfur Dioxide, that is incorporated by reference under Section R307-110-11. The Plan demonstrates that there will be no violations of the federal health standard for sulfur dioxide. The Plan supports Utah's request to the Environmental Protection Agency (EPA) that Salt Lake and eastern Tooele County be redesignated to attainment.

SUMMARY OF THE RULE OR CHANGE: Section R307-110-11 amends the date of adoption by the Air Quality Board to reflect the latest addition to the State Implementation Plan for Sulfur Dioxide that is incorporated by reference under the rule. The additions demonstrate that there have been no violations of the health standard for sulfur dioxide since 1981, and that no violations are expected in the future. Kennecott Utah Copper's smelter, the largest source of sulfur dioxide emissions, has reduced emissions from more than 200,000 tons per year in the late 1970s to less than 20,000 tons per year since the early 1990s.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-2-104(1)(a) and 19-2-104(2)(e)

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None of the control measures in the existing Plan are changed and thus there is no impact on the State budget.
- ❖ LOCAL GOVERNMENTS: No local government sources are affected by this Plan, and thus there will be no costs to them.
- ❖ OTHER PERSONS: There is no change in costs for other persons, as there is no change in the control measures required in the existing Plan.

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 existing Plan.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The major source of emissions of sulfur dioxide was Kennecott Utah Copper, and their emissions are now so low that the health standard for sulfur dioxide is no longer exceeded. No further costs are required by this Plan.

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:

Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at [janmiller@utah.gov](mailto: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 11/01/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/20/2004 at 1:30 PM, DEQ building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/02/2004

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

### **R307. Environmental Quality, Air Quality.**

#### **R307-110. General Requirements: State Implementation Plan. R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on ~~December 18, 1992~~ December 1, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, particulate matter, ozone**  
~~June 8, 2004~~  
Notice of Continuation March 27, 2002  
19-2-104(3)(e)



Governor, Planning and Budget, Chief  
Information Officer

## **R365-10**

Standards, Best Practices, and  
Institutional Knowledge Requirements  
for Executive Branch Agencies

### **NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 27398

FILED: 09/02/2004, 11:51

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides processes and structure for implementing standards and best practices for the State of Utah.

SUMMARY OF THE RULE OR CHANGE: This rule implements an information technology council of agency representatives, a standards committee, and a bid process.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63D-1a-305 and 63-46a-3

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No Impact--The implementation of this rule will not require additional resources to implement. Existing resources are already deployed to do this type of work. This rule will streamline existing activities.
- ❖ LOCAL GOVERNMENTS: No Impact--Local government is not affected by this rule

❖ OTHER PERSONS: No Impact--This rule is for Executive Branch Agencies only and does not affect people outside of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated with this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have a positive net fiscal impact on business by reducing duplication of effort through standards and best practices.

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

GOVERNOR  
PLANNING AND BUDGET,  
CHIEF INFORMATION OFFICER  
Room 116 STATE CAPITOL  
350 N STATE ST  
SALT LAKE CITY UT 84114-1103, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Randy Hughes at the above address, by phone at 801-537-9071, by FAX at 801-538-1547, or by Internet E-mail at randyhughes@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 11/02/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/03/2004

AUTHORIZED BY: Val Oveson, Chief Information Officer

**R365. Governor, Planning and Budget, Chief Information Officer.**

**R365-10. Standards, Best Practices, and Institutional Knowledge Requirements for Executive Branch Agencies.**

**R365-10-1. Purpose.**

The purpose of this rule is to:

(a) Implement the best public policies, standards, best practices, and retention of institutional knowledge within agencies of the State of Utah in the field of information technology by each state entity/organization, and

(b) To enhance the ability of state Executive Branch Agencies to complete each project at lower costs, improved quality, reduced risk, improved security, and in a more timely manner while maximizing uniformity throughout state government.

**R365-10-2. Authority.**

This rule is issued by the Chief Information Officer under the authority of Section 63D-1a-305 of the Information Technology Act, and Section 63-46a-3 of the Utah Rulemaking Act, Utah Code Annotated.

**R365-10-3. Scope of Application.**

(a) All agencies of the executive branch of state government including its administrative sub-units, except the State Board of

Education, the Board of Regents, and institutions of higher education, are included within the scope of this rule.

(b) This rule provides requirements for the implementing of standards by state agencies.

**R365-10-4. Definitions.**

(a) "IT Council" means a group of agency personnel, chaired by the CIO or designee, consisting of IT representatives within Executive Branch Agencies.

(b) "Bid Team" means a group chaired by an Information Technology Council representative, consisting of process and industry experts within Executive Branch Agencies. A bid-team may be formed as needed to review current industry directions, standards, processes, and products. The bid team so formed shall also assist in the development of procurement documents and review vendor proposals for compliance to standards.

(c) "Standards Committee" means a standing committee assigned by the state's IT Council for managing the standards process and reporting standards recommendations.

(d) "Standard" means a policy or procedure to be adhered to by all Executive Branch Agencies.

(e) "Best Practice" means the adoption, as identified and adopted by the IT Council, of standards and procedures which exemplify the most effective or efficient methodology within the IT industry, Government, and the State of Utah.

(f) "Institutional Knowledge" means such policies, best practices, standards, industry product information, and other resources made available to all Executive Branch Agencies for use in decision making and identifying agency implementation options.

**R365-10-5. Information Technology (IT) Council -- Responsibilities and Authorities.**

An IT Council shall be established and organized under the authority and direction of the Chief Information Officer (CIO); having the following duties and responsibilities:

(a) Develop and maintain IT operational standards and best practices;

(b) Recommend to the State CIO any IT policies, standards, or processes it believes should be considered by the CIO for implementation as administrative rules;

(c) Identify and review any information technology project that has been included within an agency IT Plan, which utilizes data, programs, or platforms that may be shared beneficially, and have common applicability across Executive Branch Agencies;

(d) Implement a database for tracking standards, best practices, and institutional knowledge;

(e) Establish sub-committees or teams when needed, or in response to an agency request, to direct the development of statewide bids and requests for proposals documents, on its own initiative, or in cooperation with "bid-teams";

(f) Establish a standards and best practices committee or team;

(g) Establish other teams or sub-committees as needed to assist the Council in carrying out its duties and responsibilities as defined under this rule.

**R365-10-6. Council Membership and Organization.**

(a) The CIO or designee shall chair the Council.

(b) The Council shall meet monthly or as determined by the Chair.

(c) The Council shall be composed of the highest ranking IT representatives who have direct operational responsibility for

overseeing information technology within their Executive Branch Agency.

**R365-10-7. Teams and Committees of the Council.**

- (a) The Bid or RFP review teams shall:
- (i) Be chaired by the requesting agency;
- (ii) Consist of agency experts and interested parties in the technology area being reviewed and proposed for bid;
- (iii) Remain in force until project objectives have been completed and all additions or changes to standards are approved by the Council;
- (iv) Meet reasonable timeframe requirements of the requesting agency for issuance and review of procurement bids or requests for proposals.
- (b) The standards committee shall have no less than seven, and no more than eleven members.
- (i) The members shall serve one-year terms with an option for re-appointment if approved by the Council.
- (ii) Bid Teams and Committee recommendations shall be submitted to the IT Council by the team/committee chair.

**R365-10-8. Rule Compliance Management.**

(1) A state executive branch agency's executive director, or designee, upon becoming aware of a violation, shall institute measures designed to enforce this rule. The CIO may, where appropriate, monitor compliance and report to an agency's executive director any findings or violations of this rule.

**KEY: IT standards council, IT bid committee, technology best practices, repository**

**2004**

**63D-1a-305**

**63-46a-3**



Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-25**  
Mental Health Clinic Services

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 27426

FILED: 09/15/2004, 11:43

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule needs to be repealed and will be replaced with the new rule, R414-36, that specifies community mental health center services and how these services are provided throughout the state, either under capitation or on a fee-for-service basis. (DAR NOTE: The proposed new Rule R414-36 was published in the August 15, 2004, issue of the Utah State Bulletin under DAR No. 27322.)

SUMMARY OF THE RULE OR CHANGE: The existing rule is repealed in its entirety and will be replaced with a new rule, R414-36, which is a companion filing. The new rule outlines

community mental health center services that are currently covered, as there have been changes, and delineates the ways community mental health center services are provided. In 27 counties of the State, Medicaid recipients are automatically enrolled in the capitated Prepaid Mental Health Plan. Community mental health centers participating in this program receive premiums to serve all Medicaid recipients in their catchment areas. Exceptions to enrollment in the Prepaid Mental Health Plan are also delineated. In two counties, community mental health centers continue to be reimbursed on a fee-for-service basis rather than a prepaid capitation basis.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget associated with this repeal because policies that are included in the new rule are currently in place.
- ❖ LOCAL GOVERNMENTS: There is no budget impact to local governments as a result of this repeal because policies that are included in the new rule are currently in place.
- ❖ OTHER PERSONS: There is no budget impact to other persons as a result of this repeal because policies that are included in the new rule are currently in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because policies that are included in the new rule are currently in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This outdated rule is being replaced by proposed rule R414-36. The impact on business is detailed in that filing. Scott D. Williams, MD

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

**~~[R414-25. Mental Health Clinic Services.~~**

**~~R414-25-0. Policy Statement.~~**

~~—Mental health clinic services are preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided to outpatients to meet the recipient's mental health needs, promote self-sufficiency, and systematically reduce the recipient's reliance on support systems. Services are furnished by or under the direction of a physician.~~

**~~R414-25-1. Authority and Purpose.~~**

~~—Mental health clinic services are provided under the authority of section 1905(a)(9) of Title XIX of the Social Security Act and the 42 CFR 440.90 "Clinic Services" as an optional Medicaid service. As of January 1, 1989 mental health clinics may provide services under the "Other Diagnostic and Rehabilitative Services" option 42 CFR 440.130. Under this option, services may be provided in settings other than the mental health clinic, as appropriate, but not to include inpatient hospitals.~~

**~~R414-25-2. Definitions As Used in This Chapter.~~**

~~—A. "Clinical team" means a group that includes at least a physician and an individual experienced in the diagnosis and treatment of mental illness who evaluates each recipient's need for mental health clinic services and develops an individual treatment plan, as appropriate. If the physician satisfies both criteria, the second team member shall be a licensed supervising professional who represents a service relevant to the client's need.~~

~~—B. "Direct supervision" means the supervising professional oversees the care provided to the client. The supervising professional need not necessarily be present in the same room when the service is rendered, but shall be in the clinic and immediately available to provide assistance and guidance. Documentation shall be sufficient to reflect the active participation of the supervising professional in all aspects of the client's care and treatment.~~

~~—C. "Evaluation" means identifying the existence, nature, or extent of illness, injury, or other health deviation in a recipient for the purpose of determining the need for medically necessary services by a licensed supervising professional and the reviewing and updating of the treatment plan every 90 days by the clinical team. A student intern, licensed practical nurse, or other clinic staff trained to work with psychiatric patients may obtain the intake information and prepare the evaluation report under the direct supervision of a licensed supervising professional.~~

~~—D. "Group therapy" means face-to-face clinical treatment of two or more recipients or sets of families, not to exceed 10 individuals, in the same session, to improve the recipient's emotional and mental adjustment and social functioning based on measurable treatment goals identified in the individual's treatment plan. Medicaid reimbursement can be claimed only for the Medicaid recipients receiving group therapy. Therapy services shall be rendered by a licensed supervising professional or by other clinic staff trained to work with psychiatric patients, working under the direct supervision of a licensed supervising professional.~~

~~—E. "Individual therapy" means face-to-face interventions with an individual recipient with focus on improving the recipient's emotional and mental adjustment and social functioning based on measurable treatment goals identified in the individual's treatment plan. Therapy services shall be rendered by a licensed supervising professional or by other clinic staff trained to work with psychiatric patients, working under the direct supervision of a licensed supervising professional.~~

~~—F. "Intensive mental health day treatment" means a structured individualized psychosocial rehabilitation program provided to a group in a licensed day treatment facility to reduce or control the recipient's psychiatric symptoms so as to eliminate or decrease the need for hospitalization.~~

~~—G. "Licensed supervising professional" means a licensed physician, licensed psychologist, certified or clinical social worker, registered nurse with advanced training or experience in psychiatric nursing, licensed social service worker, or licensed marriage and family therapist, as defined in Title 58 of Utah Code Annotated.~~

~~—H. "Medication management" means prescribing, administering, monitoring, and reviewing the recipient's medication and medication regimen; and providing appropriate information to the recipient regarding the medication regimen. This service shall be rendered only by a physician, registered nurse, or other practitioner licensed under state law to prescribe, review, or administer medication and acting within the scope of his license.~~

~~—I. "Mental health day treatment" means a structured individualized psychosocial rehabilitation program provided to a group in a licensed day treatment facility to reduce or control the recipient's psychiatric symptoms so as to prevent relapse or hospitalization and improve or maintain the recipient's level of functioning according to the individual's treatment plan. Day treatment may include individual therapy, group therapy, crisis management, recreational therapy, and other activities or treatment to restore and maintain the recipient's health and hygiene, social, interpersonal, and other daily living skills according to the individual treatment plan.~~

~~—J. "Outpatient" means that a patient who is receiving professional services at an organized medical facility, or distinct part of such a facility, which is not providing him with room and board and professional services on a continuous 24-hour-a-day basis, 42 CFR 440.2. The definition of an outpatient does not exclude residents of long-term care facilities from receiving clinic services. However, because of the outpatient requirement, eligibility for clinic services is limited to those patients who for the purpose of receiving necessary health care go or are brought to the clinic, or other site at which the clinic staff is available, and who on the same day leave the site at which the services are provided. State Medicaid Manual Section 4320 (D).~~

~~—K. "Physician direction" means a physician directly affiliated with the clinic assumes professional responsibility for the services provided and assures that the services are medically appropriate. The physician shall oversee the patient's care, prescribe the type of care provided and periodically review the need for continued care. The physician need not be an employee of the clinic, or be utilized on a full-time basis, or be present in the facility during all hours that services are provided; but the physician shall spend as much time in the facility as is necessary to assure that patients are getting services in a safe and efficient manner in accordance with accepted medical standards.~~

~~—L. "Plan of care" means a written, individualized plan, developed by a clinical team, to improve the patient's condition to the point where the patient's continued participation in the program, beyond occasional maintenance visits, is no longer necessary.~~

~~—M. "Prior authorization" means that degree of Medicaid agency approval for payment of services required to be obtained by a licensed provider before the service is provided.~~

~~—N. "Psychological testing" means administering, evaluating, and submitting a written report of the results of psychometric, diagnostic, projective, or standardized IQ test by a licensed psychologist or physician with experience in testing. Master's level psychologists may administer psychological tests to recipients and may interpret the tests only under the direct supervision of the licensed supervising~~

psychologist or physician. The licensed psychologist or physician shall review the tests administered, actively participate in the interpretation process, review the written report, and countersign the written report.

**R414-25-3. Eligibility Requirements/Coverage.**

—Mental health clinic services are available to Medicaid recipients who are categorically or medically needy and in need of mental health clinic services.

**R414-25-4. Program Access Requirements.**

—Mental health clinic services are covered benefits only when provided by or through a provider licensed by the Utah Department of Social Services as a comprehensive mental health treatment program in accordance with Utah law, Sections 62A-2-101 through 116, Utah Code Annotated 1953, as amended, who can furnish the full scope of mental health clinic services directly or by contract. In addition, the mental health treatment program shall be provided in a freestanding facility that is not part of a hospital but is organized and operated to provide mental health services to outpatients.

**R414-25-5. Service Coverage.**

—The scope of mental health clinic services includes the following services:

—A. In Clinic Services

—1. Evaluation

—a. If a recipient is determined to be in need of mental health clinic services, the evaluation shall include the development of an individualized, measurable treatment plan by a clinical team to improve the recipient's functioning.

—b. A unit of evaluation is one hour.

—c. Documentation for evaluations shall include the evaluation report, diagnosis, treatment recommendations, individual treatment plan, reevaluation report, and updated treatment plan.

—1. A unit of reevaluation is one reevaluation regardless of time required to complete the reevaluation.

—2. Documentation for the reevaluation shall include the reevaluation report and updated treatment plan.

—2. Psychological Testing

—a. A unit of psychological testing is either the level I or level II test regardless of time required to complete the testing and evaluation.

—b. Level I psychological test is an examination that will give rough estimates of intellectual or personality assessments to be used as a brief screening or follow up exam. The test or tests administered should be selected on the basis of reliability in measuring the client's intellectual and emotional functioning as indicated in the treatment plan. The test report will include a brief history, test administered, test scores, an evaluation of the test results, and current functioning of the examinee.

—c. Level II psychological test is a complete measure of intelligence, aptitude, educational, and personality functioning including neuro-psychological function, as appropriate. A level II test may be utilized for treatment planning. The test report will include a brief history, tests administered, test scores, evaluation of test results, current functioning of the examinee, diagnosis and prognosis.

—3. Individual Therapy

—a. A unit of individual therapy is a half-hour session.

—b. Documentation of individual therapy shall include clinical notes documenting progress toward treatment goals.

—4. Group Therapy

—a. A unit of group therapy is a half-hour session per recipient.

—b. Documentation of group therapy shall include clinical notes documenting progress toward treatment goals.

—5. Medication Management

—a. A unit of medication management is the encounter session with the physician or registered nurse.

—b. Documentation of medication management shall include the medication order or copy of the prescription signed by the prescribing practitioner and clinical notes.

—6. Mental health day treatment

—a. A unit of day treatment is one hour.

—b. For each two hours of participation in the day treatment program, the client shall receive at least 30 minutes of direct care by a licensed supervising professional. This may be aggregated throughout the day as long as the ratio is maintained. Licensed master therapeutic recreation specialists or therapeutic recreation specialists may conduct the balance of day treatment activities and supervise other mental health staff in conducting the balance of these activities.

—c. In day treatment programs for adolescents and children, a ratio of no more than 12 clients per direct staff shall be maintained during the entire day treatment program. Other clinic staff trained to work with adolescents and children may conduct the entire day treatment program if there is documentation of weekly supervision with a licensed supervising professional.

—d. Documentation of day treatment shall include monthly progress notes in the clinical record; description of direct care services provided; documentation that the licensed supervising professional direct care requirement was met; documentation of number of hours client participated in day treatment program with date of attendance and type of care provided; definition of treatment plan, goals, and recipient's progress towards goals; description of the relationship between the day treatment activities attended and the recipient's individual needs and symptomatology. In day treatment programs for adolescents and children, when staff other than licensed supervising professional staff provide the direct care, documentation of weekly supervision with a licensed physician, licensed psychologist, certified or licensed clinical social worker, or registered nurse with advanced training or experience in psychiatric nursing shall be available for review.

—7. Intensive mental health day treatment

—a. A unit of intensive day treatment is one hour.

—b. Recipients eligible for this service shall have a current Global Assessment Scale (GAS) rating or current Global Assessment of Functioning Scale (GAF) rating on Axis V of the Diagnostic and Statistical Manual of Mental Disorders, Third Edition Revised (DSM III-R) between 1 and 20. The recipient remains eligible for intensive day treatment until a rating of 21 or higher on one of the above scales is maintained for four consecutive weeks.

—c. Intensive day treatment may include individual therapy, group therapy, crisis management, recreational therapy, and other activities or treatment designed to prevent hospitalization and to stabilize the recipient's condition. Intensive forms of treatment, e.g., individual therapy, group therapy, crisis services, daily living skills activities, should be emphasized.

—d. There shall be documentation that the recipient participated in day treatment for at least four hours per day.

—e. For each four hours of participation in the intensive day treatment program, the recipient shall receive at least 60 minutes of direct care by a licensed supervising professional. This may be aggregated throughout the day as long as the ratio is maintained. Licensed master therapeutic recreation specialists or therapeutic recreation specialists may conduct the balance of day treatment



activities and supervise other mental health staff in conducting the balance of these activities. In addition, a ratio of no more than 10 recipients per licensed professional staff shall be maintained during the entire intensive day treatment program.

f. Documentation of intensive day treatment shall include weekly progress notes in the clinical record documenting medical necessity for intensive day treatment services, GAS or GAF rating, number of hours the recipient participated in intensive day treatment; the direct care services provided, by whom, and for what period of time; treatment plan goals and recipient's progress toward meeting goals.

**B. Off-Clinic Site**

1. The scope of mental health diagnostic and rehabilitative services includes:

a. evaluation: evaluations provided under this option should be used only when circumstances prevent the client from coming to the clinic;

b. individual therapy;

c. group therapy;

d. medication management;

e. mental health day treatment.

(1) Day treatment services must be provided in a facility that is licensed as a day treatment facility or that is licensed as part of the clinic.

(2) Day treatment provided under the diagnostic and rehabilitative services option may be conducted in a facility that is also the client's place of residence only if the facility is included under the mental health clinic license.

2. All Medicaid regulations and requirements for clinic services also apply to services provided at sites other than the clinic.

a. Services must be provided by or under the direction of a physician.

b. Supervision by the appropriate licensed supervising professional must be provided to staff who provide services off-site.

**R414-25-6. Standards for Mental Health Clinics.**

**A. Physician direction and staff qualifications**

1. Services shall be provided by or under the direction of a physician and delivered according to a plan of care approved by staff who meet appropriate professional qualifications. The physician must see the client at least once and shall prescribe the type of care to be provided. The physician's documentation and signature in the medical record shall evidence that the physician was actively involved in the establishment of a written plan of care for each recipient. The physician shall review and update the plan of care every 90 days.

2. Except as noted in Section R414-25-5, all mental health clinic services shall be rendered by a physician or a licensed supervising professional.

**B. Evaluation procedures**

1. An evaluation should be performed for each recipient being considered for entry into the mental health clinic treatment program. As part of the evaluation, the recipient's primary care physician should be contacted.

2. If it is determined that a recipient is in need of mental health clinic services, a clinical team shall develop an individual plan of care.

**C. Plan of care**

The treatment plan shall include measurable treatment objectives and the following:

1. the treatment regimen: the specific medical and remedial services, therapies, and activities that will be used to meet the treatment objectives;

2. a projected schedule for service delivery, including the expected frequency and duration of each type of planned therapeutic session or encounter;

3. the type of personnel that will be furnishing the services; and

4. a projected schedule for completing reevaluations of the patient's condition and updating of the plan of care.

**D. Periodic review**

The clinical team shall periodically review the recipient's plan of care in order to determine the recipient's progress toward the treatment objectives, the appropriateness of the services being furnished and the need for the recipient's continued participation in the program. The clinical team shall perform the review on a regular basis, at least every 90 days, and document the review in detail in the clinical record.

**E. Documentation**

1. The mental health clinic shall develop and maintain sufficient written documentation for each medical or remedial therapy, service, activity, or session for which billing is made that indicates at least the following:

a. the specific services rendered;

b. the date and actual time the services were rendered;

c. who rendered the services;

d. the setting in which the services were rendered;

e. the amount of time it took to deliver the services;

f. the relationship of the services to the treatment regimen described in the treatment plan;

g. updates describing the patient's progress.

2. The record shall be kept on file and made available as requested for state or federal assessment purposes.

3. For services that are not specifically included in the recipient's treatment regimen, a detailed explanation of how the services being billed relate to the treatment regimen and objectives contained in the plan of care should be included in the clinical record. Similarly, the record shall include a detailed explanation for a medical or remedial therapy session that departs from the plan of care in terms of need, scheduling, frequency or duration of services furnished, e.g., unscheduled emergency services furnished during an acute psychotic episode, explaining why this departure from the established treatment regimen is necessary in order to achieve the treatment objectives.

**F. Quality assurance**

Each mental health clinic shall have a written quality assurance program subject to review by state and federal Medicaid officials. The program shall include an interdisciplinary committee that meets at least quarterly to review quality of care and make recommendations for improvement. The quality assurance process shall include peer review procedures to appropriately assess quality of care and audit clinical records. The peer review process shall include written procedures to assess the adequacy of the treatment being delivered.

**R414-25-7. Limitations.**

**A. Evaluation**—no limits.

**B. Psychological Testing**—no limits.

**C. Individual therapy**—no limits.

**D. Group therapy**—no limits.

**E. Medication Management**—no limits.

**F. Adult or child/adolescent day treatment**—prior authorization is required for adult day treatment and child/adolescent day treatment that exceeds 160 units per month. See Section R414-25-8 for prior authorization criteria to grant additional units.

**G. Intensive adult day treatment**—prior authorization is required for intensive adult day treatment in excess of 160 units per month.

**R414-25-8. Prior Authorization.**

—A. Prior authorization is required for service units in excess of the limits set for day treatment. The prior authorization request shall include sufficient documentation to support the need for additional units. The request shall include at least the following:

—1. documentation of the course of the recipient's illness and treatment and a complete summary of the recipient's current condition including symptomatology and behavior for which additional service units are requested;

—2. documentation of initial DSM III diagnoses on Axes I-V and any change in these diagnoses;

—3. an estimate of the number of additional service units required and an explanation of how additional service units will be useful in treating the recipient's condition;

—4. a statement outlining other alternatives considered or utilized;

—5. a copy of treatment plan and a statement of how it will serve to improve the client's condition;

—6. the dates of service for which authorization is requested.

**B. Criteria for Prior Authorization**

—Day treatment. To obtain authorization, the provider shall document the recipient meets one of the following criteria:

—1. a current GAS rating or GAF rating on Axis V of the DSM III-R of 30 or under;

—2. a rating of 40 or under on the GAF Scale for the last 6-12 months;

—3. a history of psychiatric illness or psychiatric hospitalizations and corresponding evidence that the increased levels of day treatment requested will maintain or improve current levels of functioning.

—4. Three of the following:

—(a) a marked deterioration or worsening of the recipient's condition, as evidenced by an increase in symptomatology or behavior related to the diagnosis and a decrease in ability to maintain previous level of functioning;

—(b) a change in diagnosis on Axis I and/or V of the DSM III-R indicating the recipient can no longer carry out activities as he had previously and that he is at increased risk for inpatient care;

—(c) specific evidence of increased risk of suicide or destructive behavior toward self or others;

—(d) a release from an institutional setting within the last 60 days and corresponding need for additional day treatment hours to maintain gains and make a successful transition to the community.

—(e) a history of acute episodes or hospitalizations during the past year.

**R414-25-9. Reimbursement Method for Clinic Services.**

—Payment for Clinic Services is limited to the amount paid by Medicare as specified in 42 CFR 447.321.

—A. Payment for covered services will be made to qualified providers.

—B. Payment for covered services will be made on a fee-for-service basis according to the following methodology:

—1. Medicaid payments will be the lesser of (1) the billed usual and customary charges to the general public; or (2) the reasonable cost of providing the service; or (3) the established fee schedule.

—2. The usual and customary charge is the lower of the most frequently billed gross charge prior to discounts, or the charge billed to insurance companies.

—3. The cost of providing services is calculated by taking a ratio of Medicaid charges to total charges. This ratio is applied to the total allowable costs that correspond to the billable services. Reasonable costs are defined in the "Medicare Provider Reimbursement Manual," HCFA Publication 15-1 and the Utah State Plan

—4. All mental health clinic services will be billed using approved HCPC codes.

—5. On an annual basis, total Medicaid payments to the provider will be adjusted, as necessary, so that aggregate payments are limited to reasonable cost as determined by a fiscal audit.

**KEY: medicaid****1989****Notice of Continuation December 20, 1999****26-1-4.1****26-1-5****26-18-3]**

**End of the Notices of Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

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

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

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

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

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

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### Lieutenant Governor, Elections **R623-4** Uniform Procedures for Military and Overseas Citizens Absentee Applications and Ballots

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 27406  
FILED: 09/03/2004, 11:52

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to allow for the electronic transmission and acceptance of the Federal Postcard Application (FPCA) and ballots from military and overseas voters who are currently deployed in hostile fire zones or areas where mail service is not sufficient to accommodate the timely mailing of election materials.

**SUMMARY OF THE RULE OR CHANGE:** This rule allows voters in hostile fire zones or other areas where mail service is unreliable to apply for an absentee ballot using electronic means. This rule also allows county clerks to send ballots electronically to these voters.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Uniformed and Overseas Absentee Voting Act of 1986 (UOCAVA), 42 U.S.C. 1973; Sections 20A-3-401 through 20A-3-413; and Subsection 67-1a-2(2)(a)(ii)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The county clerks send and receive absentee ballot applications as well as other election material,

including ballots. The State does not incur any costs in the transmission of election materials.

❖ **LOCAL GOVERNMENTS:** County clerks may see some savings in postage and printed materials. The population of voters eligible to transmit materials electronically is very small and this will not be a significant savings. The time spent on electronic transmission will be equal to the time spent on regular mailing of ballots.

❖ **OTHER PERSONS:** There will be a small savings to other persons who will not incur the expense of postage. The population of voters eligible to transmit materials electronically is very small and this will not be a significant savings. Military citizens have access to the Defense Switch Network which allows them to access electronic equipment at no cost.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule affects county clerks and a limited number of overseas and military voters. Since the transmission of ballots is a normal part of the election process, this rule does not add costs to the process.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Ballots transmitted electronically will reduce the number of ballots being sent through the mail. Again, the population of voters eligible to transmit materials electronically is very small and this will not significantly impact the US Postal Service.

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare; and place the agency in violation of federal or state law.

Due to the large number of citizens deployed in Iraq, Afghanistan, and other remote locations, the Department of Defense (DOD), Federal Voting Assistance Program, has encouraged the states to ensure that these citizens will not be

disenfranchised due to unreliable mail service. DOD has urged the states to use alternative methods of transmitting ballots in order to accommodate these voters in a letter dated July 21, 2004.

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

LIEUTENANT GOVERNOR  
ELECTIONS  
Room E325 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY UT 84114-2325, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Amy Naccarato at the above address, by phone at 801-538-1041, by FAX at 801-538-1133, or by Internet E-mail at anaccarato@utah.gov

THIS RULE IS EFFECTIVE ON: 09/10/2004

AUTHORIZED BY: Amy Naccarato, Director

**R623. Lieutenant Governor, Elections.**

**R623-4. Uniform Procedures for Military and Overseas Citizens Absentee Applications and Ballots.**

**R623-4-1. Purpose.**

The Lieutenant Governor hereby establishes this rule for the electronic transmission and acceptance of the Federal Postcard Application (FPCA) and ballots from military and overseas voters who are currently deployed in hostile fire zones or areas where mail service is not sufficient to accommodate the timely mailing of election materials.

**R623-4-2. Authority.**

This rule is promulgated under the authority of Section 67-1a-2(2)(a)(ii), Utah Code.

**R623-4-3. Definitions.**

In addition to the terms defined in Sections 20A-1-102 and 20A-3-403, Utah Code the following terms apply:

A. "Election materials" means absentee ballot applications, the FPCA, ballots and other materials necessary to facilitate the absentee voting process.

B. "Electronically" means via facsimile, electronic mail or Internet transmission.

C. "Federal Postcard Application" (FPCA) means the form created by the Federal Voting Assistance Program (FVAP) which allows military and overseas citizens to register to vote and apply for an absentee ballot.

D. "Hostile Fire Zone" means a geographical area in which forces are assigned on official temporary duty and placed in imminent danger of being exposed to hostile fire or explosion of hostile mines.

**R623-4-4. Procedure for Accepting and Processing a FPCA.**

A. Voters covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) who are currently deployed in a hostile fire zone or other area where the mail service is unreliable shall be allowed to transmit their FPCA form electronically to the county clerk in their county of residence.

B. The voter shall file the FPCA form no later than 20 days before the day of the election in accordance with Section 20A-3-304(3)(a)(ii), Utah Code.

C. The county clerks shall:

1. Review the FPCA form to verify that it has been timely received, properly completed and signed;

2. Register the voter, if the voter is not already registered;

3. Process the absentee ballot request; and

4. Electronically transmit a ballot to the voter who filed the FPCA form.

**R623-5-4. Procedures for Return Ballot.**

A. Voters covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and who are currently deployed in a hostile fire zone or other area where the mail service is unreliable shall be allowed to transmit their ballot electronically to the county clerk in their county of residence.

B. The electronically transmitted ballot shall be accompanied by the following statement: "I understand that by electronically transmitting my voted ballot I am voluntarily waiving my right to a secret ballot. Signature of voter \_\_\_\_\_ Date \_\_\_\_\_"

C. The ballot shall be electronically transmitted before the day of the election and received by the county clerk before the date of the official canvass in accordance with Section 20A-3-306(2)(b), Utah Code.

D. Upon the receipt of an electronically transmitted ballot, the county clerk shall

1. Verify the voter's signature from the FPCA and ensure that it matches the voter's signature on the return ballot;

2. Duplicate the electronically transmitted ballot onto a regular ballot used by the county for resident voters; and

3. Maintain the electronically transmitted ballot for 22 months in accordance with Section 20A-4-202(2), Utah Code.

**R623-5-5. Intent of Rule.**

A. All attempt shall be made by the voter and the county clerk to comply with the regular by-mail absentee ballot process as defined in Section 20A-3 Part 4, Utah Code, where possible.

B. Nothing in this rule shall be construed to allow absentee voters in the United States or absentee voters living in areas where the mail service is reliable to apply for an absentee ballot electronically or receive or transmit a ballot electronically.

C. In accordance with 20A-3-401, Utah Code, each election official shall liberally construe and apply this rule to make it possible for voters in hostile fire zones or areas where mail service is not sufficient to accommodate the timely mailing of election materials to vote in county, state and national elections during their absence from their voting residence.

D. The intent of this rule is to allow voters covered under this rule the right to vote in accordance with the request made by the Department of Defense as well as demonstrated need for alternative methods of transmitting election materials.

**KEY: UOCAVA, absentee voting, military voter, overseas citizen voter**  
**September 10, 2004**

**Uniformed and Overseas Absentee Voting Act of 1986, 42 U.S.C. 1973**  
**20A-3-401 through 413**  
**67-1a-2(2)(a)(ii)**



**End of the Notices of 120-Day (Emergency) Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the 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).

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## Commerce, Occupational and Professional Licensing **R156-42a** Occupational Therapy Practice Act Rules

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27400  
FILED: 09/02/2004, 13:35

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 42a, provides for the licensure of occupational therapists and occupational therapy assistants. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-42a-201(3) provides that the Occupational Therapy Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 42a with respect to occupational therapists and occupational therapy assistants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in September 1999, it has been amended one time. In July 2003, the Division amended the rule to delete any references to temporary licensure due to the national examination being available on demand. A rule hearing was held in July 2003; however, the Division received no written comments with respect to the proposed amendments. The Division has not received any other written comments with respect to this rule since it was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 42a, with respect to occupational therapists and occupational therapy assistants.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debra Hendren at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at [dhendren@utah.gov](mailto:dhendren@utah.gov)

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 09/02/2004



## Education, Administration **R277-451** The State School Building Program

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27407  
FILED: 09/07/2004, 14:10

### 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-21-103 requires that the Utah State Board of Education adopt rules regarding

qualifications and distribution of funds for the foundation program, Section 53A-21-103.5 requires the Utah State Board of Education adopt rules regarding qualifications and distribution of funds for the Enrollment Growth Program, and Subsection 53A-1-401(3) permits the Utah State Board of Education to adopt rules in accordance with its responsibilities.

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: It is necessary to have a rule providing standards and procedures for administration of the State School Building Program, 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: 09/07/2004

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**Education, Administration**  
**R277-462**  
**Comprehensive Guidance Program**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 27408  
FILED: 09/07/2004, 14:11

**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 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

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: It is necessary to have standards and procedures for entities applying for funds for the Comprehensive Guidance Program. Consistency with program guidance protects federal Comprehensive Guidance funds, 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: 09/07/2004

▼ ————— ▼

**Education, Administration**  
**R277-463**  
**Class Size Reporting**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 27409  
FILED: 09/07/2004, 14:11

**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 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities, and Section 53A-3-602.5 directs the Utah State Board of Education in collaboration with the state's 40 school districts to develop a school performance report to include average class size by grade level and subject.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it provides standards and consistency for school districts to use when reporting class size, 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: 09/07/2004

because it specifies the standards that must be met by teacher preparation institutions to receive Utah State Board of Education approval of specific programs and training, 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: 09/07/2004

## Education, Administration

### **R277-504**

Early Childhood, Elementary,  
Secondary, Special Education (K-12),  
Communication Disorders, and Special  
Education (Birth-Age 5) Certification

#### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 27410  
FILED: 09/07/2004, 14:11

#### **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 53A-1-402(1)(a) directs the Utah State Board of Education to establish rules and minimum standards regarding the certification of educators, and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary

## Education, Administration

### **R277-521**

Professional Specialist Licensing

#### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 27411  
FILED: 09/07/2004, 14:12

#### **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 53A-6-104(1) authorizes the Utah State Board of Education to issue licenses for educators, and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

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 rule is necessary because it provides standards for licensing of professional specialists and administrators in public schools and in school district offices, 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: 09/07/2004

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: 09/07/2004

Education, Administration  
**R277-714**

Dissemination of Information About  
 Juvenile Offenders

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

DAR FILE No.: 27412  
 FILED: 09/07/2004, 14:12

**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-11-1003 directs the Utah State Board of Education to adopt rules governing the dissemination of information about violent juvenile offenders in the public schools.

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 rule is necessary because it provides procedures to school districts to follow in notifying school personnel of violent juvenile offenders in their schools as allowed under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, and therefore, this rule should be continued.

Education, Administration  
**R277-760**

Flow Through Funds for Students at  
 Risk

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

DAR FILE No.: 27413  
 FILED: 09/07/2004, 14:12

**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: Subsections 53A-17a-121(1) and (2) requires funds appropriated for at risk programs to be distributed according to rules established by the Utah State Board of Education, and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

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 rule is necessary because it provides procedures for distribution of funds for at risk programs, 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.

by FAX at 801-538-7768, or by Internet E-mail at clear@useoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 09/07/2004

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835,



**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Agriculture and Food

#### Plant Industry

No. 27320 (AMD): R68-6. Utah Nursery Act.  
Published: August 15, 2004  
Effective: September 15, 2004

#### Regulatory Services

No. 27290 (AMD): R70-630. Water Vending Machine.  
Published: August 1, 2004  
Effective: September 8, 2004

### Commerce

#### Administration

No. 27312 (AMD): R151-33. Pete Suazo Utah Athletic Commission Act Rule.  
Published: August 15, 2004  
Effective: September 15, 2004

#### Real Estate

No. 27132 (AMD): R162-101-2. Definitions.  
Published: May 15, 2004  
Effective: September 10, 2004

No. 27131 (AMD): R162-105. Scope of Authority.  
Published: May 15, 2004  
Effective: September 10, 2004

No. 27128 (AMD): R162-107. Unprofessional Conduct.  
Published: May 15, 2004  
Effective: September 10, 2004

### Community and Economic Development

#### Community Development, Library

No. 27125 (AMD): R223-2-2. Definitions.  
Published: May 15, 2004  
Effective: September 8, 2004

### Education

#### Administration

No. 27308 (REP): R277-408. Expenditures for Instructional Supplies Required in Utah Public Schools.  
Published: August 1, 2004  
Effective: September 2, 2004

No. 27309 (REP): R277-615. Foreign Exchange Students.

Published: August 1, 2004  
Effective: September 2, 2004

No. 27307 (AMD): R277-725. Electronic High School.

Published: August 1, 2004  
Effective: September 2, 2004

### Environmental Quality

#### Environmental Response and Remediation

No. 27194 (AMD): R311-200. Underground Storage Tanks: Definitions.

Published: June 15, 2004  
Effective: September 9, 2004

No. 27195 (AMD): R311-201. Underground Storage Tanks: Certification Programs.

Published: June 15, 2004  
Effective: September 9, 2004

No. 27196 (AMD): R311-203. Underground Storage Tanks: Notification, New Installations, and Registration Fees.

Published: June 15, 2004  
Effective: September 9, 2004

No. 27197 (AMD): R311-204. Underground Storage Tanks: Closure and Remediation.

Published: June 15, 2004  
Effective: September 9, 2004

No. 27198 (AMD): R311-205. Underground Storage Tanks: Site Assessment Protocol.

Published: June 15, 2004  
Effective: September 9, 2004

No. 27199 (AMD): R311-206. Underground Storage Tanks: Financial Assurance Mechanisms.

Published: June 15, 2004  
Effective: September 9, 2004

No. 27200 (AMD): R311-212. Administration of the Petroleum Storage Tank Loan Fund.

Published: June 15, 2004  
Effective: September 9, 2004

#### Solid and Hazardous Waste

No. 27289 (AMD): R315-2-13. Variances Authorized.

Published: August 1, 2004  
Effective: September 15, 2004

## NOTICES OF RULE EFFECTIVE DATES

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No. 27288 (AMD): R315-317-2. Variances.  
Published: August 1, 2004  
Effective: September 15, 2004

### Health

Health Care Financing, Coverage and Reimbursement Policy

No. 27325 (AMD): R414-504. Nursing Facility Payments.  
Published: August 15, 2004  
Effective: September 15, 2004

Health Systems Improvement, Licensing

No. 27303 (AMD): R432-2. General Licensing Provisions.  
Published: August 1, 2004  
Effective: September 14, 2004

### Human Services

Administration, Administrative Services, Licensing

No. 27275 (AMD): R501-12. Child Foster Care.  
Published: August 1, 2004  
Effective: September 9, 2004

Child and Family Services

No. 27274 (AMD): R512-302-4. Selection of a Caregiver for a Child Receiving Out of Home Services.  
Published: August 1, 2004  
Effective: September 9, 2004

### Professional Practices Advisory Commission

Administration

No. 27310 (AMD): R686-103. Professional Practices and Conduct for Utah Educators.  
Published: August 1, 2004  
Effective: September 2, 2004

### Public Safety

Fire Marshal

No. 27324 (AMD): R710-2. Rules Pursuant to the Utah Fireworks Act.  
Published: August 15, 2004  
Effective: September 15, 2004

No. 27326 (AMD): R710-5. Automatic Fire Sprinkler System Inspecting and Testing.  
Published: August 15, 2004  
Effective: September 15, 2004

### Tax Commission

Administration

No. 27236 (AMD): R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.  
Published: July 1, 2004  
Effective: September 14, 2004

Auditing

No. 27269 (AMD): R865-13G-10. Exemption for Collective Purchase of Motor Fuels by State and Local Government Agencies Pursuant to Utah Code Ann. Section 59-13-201.  
Published: July 15, 2004  
Effective: September 14, 2004

No. 27226 (AMD): R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.  
Published: July 1, 2004  
Effective: September 14, 2004

**End of the Notices of Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2004, including notices of effective date received through September 15, 2004, the effective dates of which are no later than October 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/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Administrative Services</b>					
<u>Facilities Construction and Management</u>					
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
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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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Labor Commission, Adjudication	26772	R602-1	AMD	01/02/2004	2003-23/46
<b><u>wood furniture</u></b>					
Environmental Quality, Air Quality	27144	R307-343	NSC	06/08/2004	Not Printed
	27219	R307-343	5YR	06/08/2004	2004-13/69
<b><u>work-based learning programs</u></b>					
Education, Administration	27212	R277-916	5YR	06/01/2004	2004-12/80
<b><u>workers' compensation</u></b>					
Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
Labor Commission, Industrial Accidents	26697	R612-4-2	AMD	01/01/2004	2003-21/64
Workforce Services, Workforce Information and Payment Services	26930	R994-404	R&R	04/04/2004	2004-4/43
	27253	R994-404-101	AMD	08/18/2004	2004-14/34
	26996	R994-404-101	NSC	05/01/2004	Not Printed
<b><u>working toward employment</u></b>					
Workforce Services, Employment Development	26706	R986-400	AMD	01/01/2004	2003-21/81
<b><u>youth</u></b>					
Human Services, Administration, Administrative Services, Licensing	26874	R501-16	NSC	05/01/2004	Not Printed
	26804	R501-16	AMD	04/12/2004	2003-24/29