

UTAH STATE BULLETIN

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Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Commerce Administration

Public Hearing on Proposed Modified Fee Schedule for Services Provided and Costs Incurred by the Department of Commerce During Fiscal Year 2007

The Department of Commerce will hold a hearing on Tuesday, May 16, 2006, at 9:00 a.m. at the Heber M. Wells Building, 160 East 300 South, Room 210, Salt Lake City, UT.

The purpose of the hearing is to obtain public comment on a proposed modified schedule for fees which could be assessed for services provided and costs which would be incurred within the Department. The proposed fees could become effective after the hearing. The proposed modified fee schedule supplements the Department's fee schedule approved by the Legislature during its 2006 General Session. Subsection 63-38-3.2(5)(a) of the Budgetary Procedures Act provides an agency may establish and assess regulatory fees without legislative approval. That statute governs the process for the interim assessment of such fees prior to subsequent legislative approval.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Copies of the proposed modified fee schedule will be distributed at the May 16, 2006, hearing.

For further information, please contact Peter Anjewierden at (801) 530-6293.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 1, 2006, 12:00 a.m., and April 14, 2006, 11:59 p.m. are included in this, the May 1, 2006, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least May 31, 2006. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through August 29, 2006, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

**Administrative Services, Facilities
Construction and Management
R23-1
Procurement of Construction**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28609

FILED: 04/12/2006, 15:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates procurement rules for design and construction complying with state law, as well as makes housekeeping adjustments.

SUMMARY OF THE RULE OR CHANGE: This rulemaking action provides housekeeping amendments to take into account revision in state law. It revises provisions in accordance with the guarantees recommended by the Government Records Access and Management Act (GRAMA) regarding documents submitted to the Division of Facilities Construction and Management (DFCM) in the procurement process. A major change in this proposed rule amendment is that unsuccessful proposals would become public records except for those portions properly made confidential under GRAMA. Concerns have been raised regarding the legality of a rule provision where unsuccessful proposals submitted under the competitive sealed proposals procurement method remain confidential. Representatives of the media challenged whether this provision met the requirements of GRAMA. After consideration, the Procurement Policy Board voted unanimously to substantially modify its rule. Because DFCM's procurement rules are patterned after the Division of Purchasing's rule, and currently contain provisions similar to that which was challenged, DFCM believes that similar amendments should be made to DFCM's procurement rules. These are: 1) Performance Evaluations and Reference Information – the Board had previously heard testimony and concluded that confidentiality of performance evaluations and reference information, in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution, shall be protected records; 2) Cost Information – for many years, the DFCM rule has provided for disclosure of the amount of cost proposals submitted in a request for proposal (RFP) process. GRAMA also provides that "bids" are to be public. While an argument can be made that the term "bids" does not apply to cost proposals submitted under the competitive proposals process, DFCM recommends that this provision of disclosure be retained; 3) Non-Public Financial Statements – DFCM recommends that protected status be provided to financial statements which are submitted in response to a RFP if the statements are not otherwise public. Disclosing this information would impair the procurement process and harm those submitting; 4) Tie Bids – with the passage of S.B. 220 (2006) which specifies how tie bids should be resolved, Subsection R23-1-5(13) is amended to be consistent with this new statute; and 5) Justification

Statements – the requirements for justification statements are clarified in Subsection R23-1-15(15). (DAR NOTE: S.B. 220 (2006) is found at Chapter 66, Laws of Utah 2006, and is effective 05/01/2006.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-56-208(2); Chapter 66, Laws of Utah 2006, effective 05/01/2006; and 63-2-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--While there may be added costs related to fulfilling records requests, they will be offset by fees charged for records requests as well as savings from a reduction in disputes as the rule will now be revised in accordance with the GRAMA requests.
- ❖ LOCAL GOVERNMENTS: As this amendment does not apply to local government, it has no fiscal impact on local government.
- ❖ OTHER PERSONS: This does not affect fees to other persons, except as already imposed by the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--It is our opinion that this rule imposes obligations that already exist under state law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change provides housekeeping amendments and other amendments that result in compliance with state law. This should result in no fiscal impact. D'Arcy Dixon Pignanelli, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Priscilla Anderson at the above address, by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Keith Stepan, Director

R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement of Construction.

R23-1-1. Purpose and Authority.

(1) In accordance with Subsection [~~63-56-14(2)~~63-56-208(2)], this rule establishes procedures for the procurement of construction by the Division.

(2) The statutory provisions governing the procurement of construction by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-1-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section ~~[63-56-5]~~63-56-105.

(2) In addition:

(a) "Acceptable Bid Security" means a bid bond meeting the requirements of Subsection R23-1-40(4).

(b) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(c) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(d) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

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

(f) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(g) "Price Data" means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices and includes data relevant to both prime and subcontract prices.

(h) "Procuring Agencies" means, individually or collectively, the state, the Division, the owner and the using agency.

(i) "Products" means and includes materials, systems and equipment.

(j) "Proprietary Specification" means a specification which uses a brand name to describe the standard of quality, performance, and other characteristics needed to meet the procuring agencies' requirements or which is written in such a manner that restricts the procurement to one brand.

(k) "Public Notice" means the notice that is publicized pursuant to this rule to notify contractors of Invitations For Bids and Requests For Proposals.

(l) "Record" shall have the meaning defined in Section 63-2-103 of the Government Records Access and Management Act (GRAMA).

(~~m~~) "Specification" means any description of the physical, functional or performance characteristics of a supply or construction item. It may include requirements for inspecting, testing, or preparing a supply or construction item for delivery or use.

(~~n~~) "State" means the State of Utah.

(~~o~~) "Subcontractor" means any person who has a contract with any person other than the procuring agency to perform any portion of the work on a project.

(~~p~~) "Using Agency" means any state agency or any political subdivision of the state which utilizes any services or construction procured under these rules.

(~~q~~) "Work" means the furnishing of labor or materials, or both.

R23-1-5. Competitive Sealed Bidding.

(1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, shall be used for the procurement of construction if the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) is used unless a determination

is made by the Director in accordance with Subsection ~~[R23-1-45(1)(e)]~~R23-1-15(1)(c) that the competitive sealed proposals procurement method should be used.

(2) Public Notice of Invitations For Bids.

(a) Public notice of Invitations For Bids shall be publicized electronically on the Internet; and may be publicized in any or all of the following as determined appropriate:

(i) In a newspaper having general circulation in the area in which the project is located;

(ii) In appropriate trade publications;

(iii) In a newspaper having general circulation in the state;

(iv) By any other method determined appropriate.

(b) A copy of the public notice shall be available for public inspection at the principal office of the Division in Salt Lake City, Utah.

(3) Content of the Public Notice. The public notice of Invitation For Bids shall include the following:

(a) The closing time and date for the submission of bids;

(b) The location to which bids are to be delivered;

(c) Directions for obtaining the bidding documents;

(d) A brief description of the project;

(e) Notice of any mandatory pre-bid meetings.

(4) Bidding Time. Bidding time is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the Division. Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the Director.

(5) ~~[Proposal Form]~~Bidding Documents. The bidding documents for an Invitation For Bids:

(a) shall include a [proposal]bid form having a space in which the bid prices shall be inserted and which the bidder shall sign and submit along with all other required documents and materials; and

(b) may include qualification requirements as appropriate.

(6) Addenda to the Bidding Documents.

(a) Addenda shall be distributed or otherwise made available to all entities known to have obtained the bidding documents.

(b) Addenda shall be distributed or otherwise made available within a reasonable time to allow all prospective bidders to consider them in preparing bids. If the time set for the final receipt of bids will not permit appropriate consideration, the bidding time shall be extended to allow proper consideration of the addenda.

(7) Pre-Opening Modification or Withdrawal of Bids.

(a) Bids may be modified or withdrawn by the bidder by written notice delivered to the location designated in the public notice where bids are to be delivered prior to the time set for the opening of bids.

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

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

(8) Late Bids, Late Withdrawals, and Late Modifications. Any bid, withdrawal of bid, or modification of bid received after the time and date set for the submission of bids at the location designated in the notice shall be deemed to be late and shall not be considered, unless it is the only bid received in which case it may be considered.

(9) Receipt, Opening, and Recording of Bids.

(a) Upon receipt, all bids and modifications shall be stored in a secure place until the time for bid opening.

(b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in

the notice. The names of the bidders, the bid price, and other information deemed appropriate by the Director shall be read aloud or otherwise made available to the public. After the bid opening, the bids shall be tabulated or a bid abstract made. The opened bids shall be available for public inspection.

(10) Mistakes in Bids.

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

(b) When it appears from a review of the bid that a mistake may have been made, the Director may request the bidder to confirm the bid in writing. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid substantially lower than the other bids submitted.

(c) This subsection sets forth procedures to be applied in three situations described below in which mistakes in bids are discovered after opening but before award.

(i) Minor formalities are matters which, in the discretion of the Director, are of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the Director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The Director, in his sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the procuring agencies. Examples include the failure of a bidder to:

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

(B) Acknowledge receipt of any addenda to the Invitation For Bids, but only if it is clear from the bid that the bidder received the addenda and intended to be bound by its terms; the addenda involved had a negligible effect on price, quantity, quality, or delivery; or the bidder acknowledged receipt of the addenda at the bid opening.

(ii) If the Director determines that the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) A bidder may be permitted to withdraw a low bid if the Director determines a mistake is clearly evident on the face of the bid document but the intended amount of the bid is not similarly evident, or the bidder submits to the Division proof which, in the Director's judgment, demonstrates that a mistake was made.

(d) No bidder shall be allowed to correct a mistake or withdraw a bid because of a mistake discovered after award of the contract; provided, that mistakes of the types described in this Subsection (10) may be corrected or the award of the contract canceled if the Director determines that correction or cancellation will not prejudice the interests of the procuring agencies or fair competition.

(e) The Director shall approve or deny in writing all requests to correct or withdraw a bid.

(11) Bid Evaluation and Award. Except as provided in the following sentence, the contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the bidding documents and no bid shall be evaluated for any requirements or criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a

resident contractor if the provisions of Section ~~[63-56-20.6]~~63-56-405 are met.

(12) Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.

(a) Although issuance of an Invitation For Bids does not compel award of a contract, the Division may cancel an Invitation For Bids or reject bids received in whole or in part only when the Director determines that it is in the best interests of the procuring agencies to do so.

(b) The reasons for cancellation or rejection shall be made a part of the project file and available for public inspection.

(c) Any determination of nonresponsibility of a bidder ~~[or offeror]~~ shall be made by the Director in writing and shall be based upon the criteria that the Director shall establish as relevant to this determination with respect to the particular project. An unreasonable failure of the bidder or ~~[offeror]~~ to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder or ~~[offeror]~~ determined to be nonresponsible shall be provided with a copy of the written determination within a reasonable time. ~~[Information]~~The Board finds that it would impair governmental procurement proceedings by creating a disincentive for bidders to respond to inquiries of nonresponsibility. Therefore information furnished by a bidder or ~~[offeror]~~ pursuant to any inquiry concerning responsibility shall be classified as a protected record pursuant to Section 63-2-304 and ~~[shall not be disclosed to the public by the Division without the prior written consent of the bidder or offeror]~~ may be disclosed only as provided for in Subsection R23-1-35.

(13) Tie Bids. Tie bids shall be resolved in accordance with Section 63-56-426.

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

~~—(b) Award. Award shall be determined through a coin toss or the drawing of lots as determined by the Director. The coin toss or drawing of lots shall be open to the public, including the bidders who submitted the tie bids.~~

~~—(c) Record. Documentation of the tie bids and the procedure used to resolve the award of the contract shall be placed in the contract file.~~

(14) Subcontractor Lists. For purposes of this Subsection (14), the definitions of Section 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63-A-5-208(3)(a).

(a) The subcontractor list shall include the following:

(i) the type of work the subcontractor is to perform;

(ii) the subcontractor's name;

(iii) the subcontractor's bid amount;

(iv) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and

(v) the impact that the selection of any alternate included in the solicitation would have on the information required by this Subsection (14).

(b) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.

(c) If pursuant to Subsection 63A-5-208(4), a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:

- (i) comply with the requirements of Section 63A-5-208 and
 - (ii) clearly list himself on the subcontractor list form.
- (d) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of his reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this section, and, provided that this does not result in an adjustment to the bidder's contract amount.
- (e) Pursuant to Sections 63A-5-208 and 63-2-304, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.
- (15) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change his listed subcontractors only after receiving written permission from the Director based on complying with all of the following:
- (a) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons:
 - (i) the original subcontractor has failed to perform, or is not qualified or capable of performing,
 - (ii) the subcontractor has requested in writing to be released;
 - (b) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;
 - (c) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;
 - (d) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and
 - (e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R23-1-10. Multi-Step Sealed Bidding.

- (1) Description. Multi-step sealed bidding is a two-phase process. In the first phase bidders submit unpriced technical offers to be evaluated. In the second phase, bids submitted by bidders whose technical offers are determined to be acceptable during the first phase are considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the Division and suitable for competitive pricing.
- (2) Use. The multi-step sealed bidding method may be used when the Director deems it to the advantage of the state. Multi-step sealed bidding may be used when it is considered desirable:
- (a) to invite and evaluate technical offers or statements of qualifications to determine their acceptability to fulfill the purchase description requirements;
 - (b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;
 - (c) to accomplish (a) or (b) prior to soliciting bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

(3) Pre-Bid Conferences In Multi-Step Sealed Bidding. The Division may hold one or more pre-bid conferences prior to the submission of unpriced technical offers or at any time during the evaluation of the unpriced technical offers.

(4) Procedure for Phase One of Multi-Step Sealed Bidding.

(a) Public Notice. Multi-step sealed bidding shall be initiated by the issuance of a Public Notice in the form required by Subsections R23-1-5(2) and (3).

(b) Invitation for Bids. The multi-step Invitation for Bids shall state:

- (i) that unpriced technical offers are requested;
- (ii) when bids are to be submitted (if they are to be submitted at the same time as the unpriced technical offers, the bids shall be submitted in a separate sealed envelope);
- (iii) that it is a multi-step sealed bid procurement, and bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
- (iv) the criteria to be used in the evaluation of the unpriced technical offers;
- (v) that the Division, to the extent the Director finds necessary, may conduct oral or written discussions of the unpriced technical offers;
- (vi) that the item being procured shall be furnished in accordance with the bidders technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids; and
- (vii) that bidders may designate those portions of the unpriced technical offers which ~~contain trade secrets or other proprietary data which are to remain confidential. If the bidder selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the Director shall examine the request to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall inform the bidder in writing what portion of the offer will be disclosed and that, unless the bidder withdraws the offer, it will be disclosed. If the bidder believes qualifies as a protected record as provided in Section R23-1-35. Such designated portions may be disclosed only as provided for in Section R23-1-35.~~

(c) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Director, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R23-1-5(12) and a new Invitation for Bids may be issued.

(d) Receipt and Handling of Unpriced Technical Offers. After the date and time established for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection. Prior to award, unpriced technical offers shall be shown only to those involved with the evaluation of the offers who shall adhere to the requirements of GRAMA and this rule. ~~[The] Except for those portions classified as protected under Section R23-1-35 or otherwise subject to non-disclosure under applicable law, unpriced technical [offer of the successful bidder] offers shall be open to public inspection [for a period of 90 days] after award of the contract. [Unpriced technical offers of bidders who are not awarded contracts shall not be open to public inspection.]~~

(e) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids which may include an evaluation of the past performance of the bidder. The unpriced technical offers shall be categorized as acceptable or unacceptable. The Director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be conducted with bidders who submit an acceptable technical offer. During the course of discussions, any information derived from one unpriced technical offer shall not be disclosed to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information modifying or otherwise amending its technical offer until the closing date established by the Director. Submission may be made at the request of the Director or upon the bidder's own initiative.

(g) Notice of Unacceptable Unpriced Technical Offer. When the Director determines a bidder's unpriced technical offer to be unacceptable, he shall notify the bidder in writing. Such bidders shall not be afforded an additional opportunity to supplement technical offers.

(h) Confidentiality of Past Performance and Reference Information. Confidentiality of past performance and reference information shall be maintained in accordance with Subsection R23-1-15(10).

(5) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during phase one:

- (a) before unpriced technical offers are considered;
- (b) after any discussions have commenced under Subsection R23-1-10(4)(f); or
- (c) when responding to any amendment of the Invitation for Bids.

Otherwise mistakes may be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).

(6) Carrying Out Phase Two.

(a) Initiation. Upon the completion of phase one, the Director shall either:

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

(ii) invite each acceptable bidder to submit a bid.

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

- (i) as specifically set forth in Section R23-1-10; and
- (ii) no public notice is given of this invitation to submit.

R23-1-15. Competitive Sealed Proposals.

(1) Use.

(a) Construction Management. The competitive sealed proposals procurement method shall be used in the procurement of a construction manager under the construction manager/general contractor method of construction contract management described in subsection R23-1-45(5)(d) due to the need to consider qualifications, past performance and services offered in addition to the cost of the services and because only a small portion of the ultimate construction cost is typically considered in this selection.

(b) Design-Build. In order to meet the requirements of Section ~~[63-56-43.4]~~63-56-703, competitive sealed proposals shall be used to procure design-build contracts.

(c) Design-Bid-Build. The competitive sealed proposals procurement method may be used for procuring a contractor under the design-bid-build method of construction contract management described in subsection R23-1-45(5)(b) only after the Director makes a determination that it is in the best interests of the state to use the competitive sealed proposals method due to unique aspects of the project that warrant the consideration of qualifications, past performance, schedule or other factors in addition to cost.

(2) Documentation. The Director's determination made under subsection R23-1-15(1)(c) shall be documented in writing and retained in the project file.

(3) Public Notice.

(a) Public notice of the Request for Proposals shall be publicized in the same manner provided for giving public notice of an Invitation for Bids, as provided in Subsection R23-1-5(2).

(b) The public notice shall include:

- (i) a brief description of the project;
- (ii) directions on how to obtain the Request for Proposal documents;
- (iii) notice of any mandatory pre-proposal meetings; and
- (iv) the closing date and time by which the first submittal of information is required;

(4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the public notice and the date and time set for the receipt of proposals by the Division. In each case, the proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory pre-proposal meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

(5) Form of Proposal. The Request for Proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.

(6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors until the deadline for best and final offers.

(7) Modification or Withdrawal of Proposals.

(a) Proposals may be modified prior to the due dates established in the Request for Proposals.

(b) Proposals may be withdrawn until the notice of selection is issued.

(8) Late Proposals, and Late Modifications. Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the due dates established in the Request for Proposals shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

~~[(a)]~~ After the date established for the first receipt of proposals or other required information, a register of offerors shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals who shall adhere to the requirements of GRAMA and this rule.

~~—(b) Except as provided in this rule, proposals of the successful offeror shall be open to public inspection after award of the contract. Proposals of offerors who are not awarded contracts shall not be open~~

to public inspection although the amount of each offeror's cost proposal shall be disclosed after the contract is awarded.

—(e) The Request for Proposals may provide that certain information required to be submitted by the offeror shall be considered confidential and classified as protected if such information meets the provisions of Section 63-2-304 of the Government Records Access and Management Act.

—(d) If the offeror selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the Director shall examine the request to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposal, it will be disclosed.]

(10) Confidentiality of [Past]Performance Evaluations and Reference Information. The Board finds that it is necessary to maintain the confidentiality of [past]performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing [past]performance evaluations and reference information are classified as protected records under the provisions of Subsections 63-2-304(2) and (6) and shall be disclosed only to those persons involved with the performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the contractor that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

(11) Evaluation of Proposals.

(a) The evaluation of proposals shall be conducted by an evaluation committee appointed by the Director that may include representatives of the Division, the Board, other procuring agencies, and contractors, architects, engineers, and others of the general public. Each member of the selection committee shall certify as to his lack of conflicts of interest.

(b) The Request for Proposals shall state all of the evaluation factors and the relative importance of price and other evaluation factors.

(c) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposals shall not be considered.

(d) Proposals may be initially classified as potentially acceptable or unacceptable. Offerors whose proposals are unacceptable shall be so notified by the Director in writing and they may not continue to participate in the selection process.

(e) This classification of proposals may occur at any time during the selection process once sufficient information is received to consider the potential acceptability of the offeror.

(f) The request for proposals may provide for a limited number of offerors who may be classified as potentially acceptable. In this case, the offerors considered to be most acceptable, up to the number of offerors allowed, shall be considered acceptable.

(12) Proposal Discussions with Individual Offerors.

(a) Unless only one proposal is received, proposal discussions with individual offerors, if held, shall be conducted with no less than the offerors submitting the two best proposals.

(b) Discussions are held to:

(i) Promote understanding of the procuring agency's requirements and the offerors' proposals; and

(ii) Facilitate arriving at a contract that will be most advantageous to the procuring agencies taking into consideration price and the other evaluation factors set forth in the request for proposals.

(c) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(13) Best and Final Offers. If utilized, the Director shall establish a common time and date to submit best and final offers. Best and final offers shall be submitted only once unless the Director makes a written determination before each subsequent round of best and final offers demonstrating that another round is in the best interest of the procuring agencies and additional discussions will be conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(14) Mistakes in Proposals.

(a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established in the Request for Proposals for receipt of that information by withdrawing or correcting the proposal as provided in Subsection R23-1-15(7).

(b) Confirmation of proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror may be asked to confirm the proposal. Situations in which confirmation may be requested include obvious, apparent errors on the face of the proposal or a proposal amount that is substantially lower than the other proposals submitted. If the offeror alleges mistake, the proposal may be corrected or withdrawn as provided for in this section.

(c) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under Subsection R23-1-5(10)(c).

~~(e)~~(d) Mistakes discovered after award. Offeror shall be bound to all terms, conditions and statements in offeror's proposal after award of the contract.

(15) Award.

(a) Award Documentation. A brief written ~~[determination]~~ justification statement shall be made showing the basis on which the award was found to be most advantageous to the state ~~[based on the taking into consideration price and the other evaluation factors set forth in the Request for Proposals.]~~ —This requirement may be satisfied through documentation of a scoring of the proposals based on the evaluation factors and associated points as identified in the Request for Proposals.

(b) One proposal received. If only one proposal is received in response to a Request for Proposals, the Director may, as he deems appropriate, make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

(16) Publicizing Awards.

(a) Notice. After ~~[a contract is entered into]~~ the selection of the successful offeror(s), notice of award shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(b) Information Disclosed. The following shall be disclosed with the notice of award:

- (i) the rankings of the proposals;
- (ii) the names of the selection committee members;
- (iii) the amount of each offeror's cost proposal;
- (iv) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and
- (v) the written justification statement supporting the selection.

(c) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

- (i) the names of individual selection committee scorers in relation to their individual scores or rankings; and
- (ii) non-public financial statements.

[R23-1-35. Qualifications of Contractors.

(1) Project Specific Requirements. The Division may include qualification requirements in the bidding documents as appropriate for that specific project.]

R23-1-35. Protected Records.

(1) General Classification. Records submitted to the Division in a procurement process are classified as public unless a different classification is determined in accordance with Title 63, Chapter 2, U.C.A., Government Records Access and Management Act, hereinafter referred to as GRAMA.

(2) Protected Records. Records meeting the requirements of Section 63-2-304 will be treated as protected records if the procedural requirements of GRAMA are met. Examples of protected records include the following:

(a) trade secrets, as defined in Section 13-24-2, if the requirements of Subsection R23-1-35(3) are met;

(b) commercial information or nonindividual financial information if the requirements of Subsection 63-2-304(2) and Subsection R23-1-35(3) are met; and

(c) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division, including, but not limited to, those records for which such a determination is made in this rule R23-1, Procurement of Construction, or rule R23-2, Procurement of Architect-Engineer Services.

(3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in Subsections R23-1-35(2)(a) and R23-1-35(2)(b) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. Such statements must address each portion of a document for which protected status is requested.

(4) Notification. A person who complies with this Section R23-1-35 shall be notified by the Division prior to the Division's public release of any information for which business confidentiality has been asserted.

(5) Disclosure of Records and Appeal. The records access determination and any further appeal of such determination shall be made in accordance with the provisions of Sections 63-2-308 and 63-2-401 et seq., GRAMA.

(6) Not Limit Rights. Nothing in this rule shall be construed to limit the right of the Division to protect a record from public disclosure where such protection is allowed by law.

R23-1-45. Methods of Construction Contract Management.

(1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. The Director shall have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Director shall consider the results achieved on similar projects in the past, the methods used, and other appropriate and effective methods and how they might be adapted or combined to fulfill the needs of the procuring agencies. The use of the design-bid-build method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost equal to or less than \$1,500,000 and the construction manager/general contractor method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost greater than \$1,500,000. The Director shall include a statement in the project file setting forth the basis for using any construction contracting method other than those suggested in the preceding sentence.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, the Director shall consider the factors outlined in Subsection ~~63-56-36(1)(e)~~ 63-56-501(1)(c).

(5) General Descriptions.

(a) Application of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed for all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project.

(b) Design-Bid-Build. The design-bid-build method is typified by one business, acting as a general contractor, contracting with the state to complete a construction project in accordance with drawings and specifications provided by the state within a defined time period. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Design-Build. In a design-build project, a business contracts directly with the Division to meet requirements described in a set of performance specifications. The design-build contractor is responsible for both design and construction. This method can include instances where the design-build contractor supplies the site as part of the package.

(d) Construction Manager/General Contractor. A construction manager/general contractor is a firm experienced in construction that provides professional services to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction

manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. The procurement of a construction manager/general contractor may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in ~~Sections 63-56-20 through 63-56-35.8~~ Title 63, Chapter 56, Part 4, Source Selections and Contract Formation, in a similar manner as if the subcontract work was procured directly by the Division.

R23-1-50. Cost or Pricing Data and Analysis; Audits.

(1) Applicability. Cost or pricing data shall be required when negotiating contracts and adjustments to contracts if:

(a) adequate price competition is not obtained as provided in Subsection (2); and

(b) the amounts set forth in Subsection (3) are exceeded.

(2) Adequate Price Competition. Adequate price competition is achieved for portions of contracts or entire contracts when one of the following is met:

(a) When a contract is awarded based on competitive sealed bidding;

(b) When a contractor is selected from competitive sealed proposals and cost was one of the selection criteria;

(c) For that portion of a contract that is for a lump sum amount or a fixed percentage of other costs when the contractor was selected from competitive sealed proposals and the cost of the lump sum or percentage amount was one of the selection criteria;

(d) For that portion of a contract for which adequate price competition was not otherwise obtained when competitive bids were obtained and documented by either the Division or the contractor;

(e) When costs are based upon established catalogue or market prices;

(f) When costs are set by law or rule;

(g) When the Director makes a written determination that other circumstances have resulted in adequate price competition.

(3) Amounts. This section does not apply to:

(a) Contracts or portions of contracts costing less than \$100,000, and

(b) Change orders and other price adjustments of less than \$25,000.

(4) Other Applications. The Director may apply the requirements of this section to any contract or price adjustment when he determines that it would be in the best interest of the state.

(5) Submission of Cost or Pricing Data and Certification. When cost or pricing data is required, the data shall be submitted prior to beginning price negotiation. The offeror or contractor shall keep the data current throughout the negotiations certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.

(6) Refusal to Submit. If the offeror refuses to submit the required data, the Director shall determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. If a contractor refuses to submit the required data to support a price adjustment, the Director shall determine in writing whether to further investigate the price adjustment, to not allow any price adjustment, or to set the amount of the price adjustment.

(7) Defective Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the Division shall be entitled to an adjustment of the contract price to exclude any significant sum, including profit or fee, to the extent the contract sum was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee; therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by this amount. In establishing that the defective data caused an increase in the contract price, the Director shall not be required to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(8) Audit. The Director may, at his discretion, and at reasonable times and places, audit or cause to be audited the books and ~~records~~ information of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to the cost or pricing data submitted.

(9) Retention of Books and ~~Records~~ Information. Any contractor who receives a contract or price adjustment for which cost or pricing data is required shall maintain all books and ~~records~~ information that relate to the cost or pricing data for three years from the date of final payment under the contract. This requirement shall also extend to any subcontractors of the contractor.

KEY: contracts, public buildings, procurement

Date of Enactment or Last Substantive Amendment: ~~October 18, 2005~~ 2006

Notice of Continuation: June 6, 2002

Authorizing, and Implemented or Interpreted Law: 63A-5-103 et seq.; 63-56-14(2); 63-56-20(7)

◆ ————— ◆

Administrative Services, Facilities Construction and Management **R23-1** Procurement of Construction

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28608

FILED: 04/12/2006, 15:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is to increase the level to which the small purchase provisions apply. To quickly detail the changes, this amendment increases (from \$50,000 to \$100,000) the level of construction contracts at which the full procurement

requirements must be met. Above this level, contracts must be advertised and a formal procurement process followed. Also, the current rule allows the director to use whatever method he deems adequate and reasonable to select construction contracts costing \$5,000 or less. The amendment increases this level to \$10,000. There is a safeguard; existing language in the rule that is not being amended provides that these dollar levels are minimum requirements and the more stringent requirements may be applied to smaller contracts when warranted.

SUMMARY OF THE RULE OR CHANGE: This amendment increases (from \$50,000 to \$100,000) the level of construction contracts at which the full procurement requirements must be met. Above this level, contracts must be advertised and a formal procurement process followed. Contracts costing less than this amount fall into the "small procurement" provisions where the rule provides for two levels of procedural requirements. The current rule allows the director to use whatever method he deems adequate and reasonable to select construction contracts costing \$5,000 or less. The amendment increases this level to \$10,000. The second level of procedure requires that written quotations or proposals be obtained from at least two firms. The selection is then made similar to the regular processes except that a public advertisement is not required and only invited firms may submit bids or proposals. Under the amended provisions, this second level of procedural requirement applies to construction contracts costing more than \$10,000 and up to \$100,000. It should be noted that existing language in the rule that is not being amended provides that these dollar levels are minimum requirements and the more stringent requirements may be applied to smaller contracts when warranted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-56-208(2) and Section 63-56-409

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** During the last two years, construction costs have increased by about 25% and they are expected to continue to rise by about 10% per year for the next 2 years. This has caused a substantial number of contracts to move into more stringent procurement requirements which demand a greater level of effort by the Division of Facilities and Construction Management (DFCM) staff. This amendment will return the workload demand for DFCM staff to the level that existed prior to the escalation of construction costs. A similar rule was authorized by the Utah State Building Board on 09/16/2005, that proposed to change the limits regarding the procedures for procurements, as well as the limit for bond requirements. This new change presented to the Building Board on 04/12/2006, still changes the limits regarding procurements but does not change the limit for bond requirements. It is not possible to estimate the actual savings that will accrue from these amendments.
- ❖ **LOCAL GOVERNMENTS:** As local governments do not operate as construction contractors for DFCM, this rule does not apply to them.
- ❖ **OTHER PERSONS:** The amendments will reduce the costs for construction contractors to pursue contracts with DFCM

costing \$100,000 or less. The amount of this savings cannot be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The effect of the amendments is to decrease the cost to comply with procurement requirements for firms pursuing building construction contracts with the State.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments streamline the procurement procedures that must be followed by contractors seeking smaller building construction contracts with the State. This will result in savings that will benefit the contractors and a portion will flow through to the State. D'Arcy Dixon Pignanelli, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Priscilla Anderson at the above address, by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Keith Stepan, Director

R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement of Construction.

R23-1-20. Small Purchases.

- (1) Procurements of [~~\$50,000~~]\$100,000 or Less.
 - (a) The Director may make procurements of construction estimated to cost [~~\$50,000~~]\$100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.
 - (b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the Division.
 - (c) If the Director determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost [~~\$50,000~~]\$100,000 or less, the Director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R23-1-15 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of [~~\$5,000~~]\$10,000 or Less. The Director may make small purchases of construction of [~~\$5,000~~]\$10,000 or less in any manner that he shall deem to be adequate and reasonable.

(3) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.

R23-1-40. Acceptable Bid Security; Performance and Payment Bonds.

(1) Application. This section shall govern bonding and bid security requirements for the award of construction contracts by the Division in excess of \$50,000; although the Division may require acceptable bid security and performance and payment bonds on smaller contracts. Bidding Documents shall state whether acceptable bid security, performance bonds or payment bonds are required.

(2) Acceptable Bid Security.

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

(b) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(i)(A) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5); and

(B) the contractor provides acceptable bid security by the close of business of the next succeeding business day after the Division notified the contractor of the defective bid security; or

(ii) only one bid is received.

(3) Payment and Performance Bonds. Payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of \$50,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection (5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division.

(5) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The Director may waive the bonding requirement if the Director finds, in writing, that bonds cannot be reasonably obtained for the work involved.

KEY: contracts, public buildings, procurement
Date of Enactment or Last Substantive Amendment: [~~October 18, 2005~~]2006

Notice of Continuation: June 6, 2002

Authorizing, and Implemented or Interpreted Law: 63A-5-103 et seq.; 63-56-14(2); 63-56-20(7)

◆ ————— ◆

**Administrative Services, Facilities
Construction and Management
R23-2
Procurement of Architect-Engineer
Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28607

FILED: 04/12/2006, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates procurement rules for design and construction complying with state law, as well as makes housekeeping adjustments.

SUMMARY OF THE RULE OR CHANGE: This rulemaking action provides housekeeping amendments to take into account revision in state law. It revises provisions in accordance with the guarantees recommended by the Government Records Access and Management Act (GRAMA) regarding documents submitted to the Division of Facilities Construction and Management (DFCM) in the procurement process. A major change in this proposed rule amendment is that unsuccessful proposals would become public records except for those portions properly made confidential under GRAMA. Concerns have been raised regarding the legality of a rule provision where unsuccessful proposals submitted under the competitive sealed proposals procurement method remain confidential. Representatives of the media challenged whether this provision met the requirements of GRAMA. After consideration, the Procurement Policy Board voted unanimously to substantially modify its rule. Because DFCM's procurement rules are patterned after the Division of Purchasing's rule, and currently contain provisions similar to that which was challenged, DFCM believes that similar amendments should be made to DFCM's procurement rules. These are: 1) Performance Evaluations and Reference Information - the Board had previously heard testimony and concluded that confidentiality of performance evaluations and reference information, in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution, shall be protected records; 2) Cost Information – for many years, the DFCM rule has provided for disclosure of the amount of cost proposals submitted in an request for proposal (RFP) process. GRAMA also provides that "bids" are to be public. While an argument can be made that the term "bids" does not apply to cost proposals submitted under

the competitive proposals process, DFCM recommends that this provision of disclosure be retained; and 3) Non-Public Financial Statements – DFCM recommends that protected status be provided to financial statements which are submitted in response to a RFP if the statements are not otherwise public. Disclosing this information would impair the procurement process and harm those submitting.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-56-208(2) and Section 63-2-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--While there may be added costs related to fulfilling records requests they will be offset by fees charged for records requests, as well as savings from a reduction in disputes as the rule will now be revised in accordance with the GRAMA requests.

❖ LOCAL GOVERNMENTS: Local governments do not bid on architect or engineering services for DFCM. As a result, this amendment does not apply to local government.

❖ OTHER PERSONS: This does not affect fees to other persons, except as already imposed by the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--It is our opinion that this rule imposes obligations that already exist under state law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change provides housekeeping amendments and other amendments that result in compliance with state law. This should result in no fiscal impact. D'Arcy Dixon Pignanelli, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Priscilla Anderson at the above address, by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Keith Stepan, Director

R23. Administrative Services, Facilities Construction and Management.

R23-2. Procurement of Architect-Engineer Services.

R23-2-1. Purpose and Authority.

(1) In accordance with Subsection ~~[63-56-14(2)]~~63-56-208(2), this rule establishes procedures for the procurement of architect-engineer services by the Division.

(2) The statutory provisions governing the procurement of architect-engineer services by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-2-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section ~~[63-56-5]~~63-56-105.

(2) The following additional terms are defined for this rule.

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

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

(d) "Public Notice" means the notice that is publicized pursuant to this rule to notify architects and engineers of Solicitations.

(e) "Record" shall have the meaning defined in Section 63-2-103 of the Government Records Access and Management Act (GRAMA).

(f) "Solicitations" means all documents, whether attached or incorporated by reference, used for soliciting information from architects and engineers seeking to provide architect-engineer services to the Division.

~~[(f)]~~(g) "State" means the State of Utah.

~~[(g)]~~(h) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

R23-2-10. Receipt and Registration of Submittals.

After the date established for the first submittal of information, a register of submitting architects and engineers shall be prepared and open to public inspection. Prior to award, ~~proposals~~submittals and modifications shall be shown only to procurement officials and other persons involved with the review and selection process who shall adhere to the requirements of GRAMA and this rule.

R23-2-11. Disclosure of ~~[Contents of]~~ Submittals, Performance Evaluations, and References.

(1) Except as provided in this rule, submittals ~~[of the successful architect or engineer]~~ shall be open to public inspection after ~~[award of the contract]~~notice of the selection results. ~~Submittals of architects and engineers who are not awarded contracts shall not be open to public inspection.~~

~~(2) The Solicitation may provide that certain information required to be submitted by the offeror shall be considered confidential and classified as protected if such information meets the provisions of Section 63-2-304 of the Government Records Access and Management Act.~~

~~—(3) If the architect or engineer selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the Director shall examine the request to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall inform the architect or engineer in writing what portion of the proposal will be disclosed and that, unless the architect or engineer withdraws the submittal, it will be disclosed.~~

~~[(4)](2) The classification of records as protected and the treatment of such records shall be as provided in Section R23-1-35.~~

~~(3) The Board finds that it is necessary to maintain the confidentiality of [past]performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing [past]performance evaluations and reference information are classified as protected records under the provisions of Subsection 63-2-304(2) and (6) and shall be disclosed only to those persons involved with the performance evaluation, the architect-engineer that the information addresses and persons involved with the review and selection of submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect-engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.~~

R23-2-13. Evaluation and Ranking.

(1) The selection committee shall evaluate the relative competence and qualifications of architects and engineers who submit the required information.

(2) The evaluation shall be based on evaluation factors set forth in the solicitation and may include:

- (a) past performance and references;
- (b) qualifications and experience of the firm and key individuals;
- (c) plans for managing and avoiding project risks;
- (d) interviews; and
- (e) other factors that indicate the relevant competence and qualifications of the architect-engineer and the architect-engineer's ability to satisfactorily provide the desired services.

(3) The evaluation may be conducted in two phases with the first phase identifying no less than the top three ranked firms to be evaluated further in the second phase unless less than three firms are competing for the contract.

(4) Numerical rating systems may be used but are not required.

(5) The evaluation committee shall rank at least the top three firms. ~~[Notice of the selection results shall be provided to each firm competing for the contract.]~~

R23-2-14. Publicizing Selections.

(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(2) Information Disclosed. The following shall be disclosed with the notice of selection:

- (a) the ranking of the firms;
- (b) the names of the selection committee members;
- (c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and
- (d) the written justification statement supporting the selection.

(3) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

- (a) the names of individual selection committee scorers in relation to their individual scores or rankings; and
- (b) non-public financial statements.

R23-2-15. Negotiation and Appointment.

The Director shall conduct negotiations as provided for in Section ~~[63-56-44]~~63-56-704 until an agreement is reached.

R23-2-~~15~~16. Role of the Board.

(1) The Board has the responsibility to establish and monitor the selection process. It must verify the acceptability of the procedure and make changes in procedure as determined necessary by the Board.

(2) At each regular meeting of the Board, the Division shall submit a list of all architect/engineer contracts entered into since its previous report and the method of selection used. This shall be for the information of the Board.

R23-2-~~16~~17. Performance Evaluation.

(1) The Division shall evaluate the performance of the architectural/engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

(2) This ~~[rating]~~evaluation shall become a part of the record of that architectural/engineering firm within the Division. The architectural/engineering firm shall be ~~[apprised in writing of its performance rating]~~provided a copy of its evaluation at the end of the project and may enter its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsection ~~[R23-2-(4)]~~R23-2-11(3).

R23-2-~~17~~18. Emergency Conditions.

The Director, in consultation with the chairman of the Board, shall determine if emergency conditions exist and document his decision in writing. The Director may use any reasonable method of awarding contracts for architect-engineer services in emergency conditions.

R23-2-~~18~~19. Direct Awards.

(1) The Director may award a contract to an architectural/engineering firm without following the procedures of this rule if:

- (a) The contract is for a project which is integrally related to, or an extension of, a project which was previously awarded to the architectural/engineering firm;
- (b) The architectural/engineering firm performed satisfactorily on the related project; and
- (c) The Director determines that the direct award is in the best interests of the State.

(2) The Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

R23-2-~~19~~20. Small Purchases.

(1) If the Director determines that the services of architects and engineers can be procured for less than \$50,000, or if the estimated construction cost of the project is less than \$500,000, the procedures contained in Subsection (2) may be used.

(2) The Director shall select a qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. The qualified firm may be, but is not required to be, selected from the register of architectural and engineering firms provided for in Section R23-2-3. If, after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated at a fair and reasonable price.

R23-2-[20]21. Alternative Procedures.

(1) The Division may enhance the process whenever the Director determines that it would be in the best interest of the state. This may include the use of a design competition.

(2) Any exceptions to this rule must be justified to and approved by the Board.

(3) Regardless of the process used, the using agency shall be involved jointly with the Division in the selection process.

KEY: procurement, architects, engineers

Date of Enactment or Last Substantive Amendment: ~~March 15, 2005~~ 2006

Notice of Continuation: December 23, 2004

Authorizing, and Implemented or Interpreted Law: 63A-5-103 et seq.; 63-56-14(2); 63-2-101 et seq.

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**Commerce, Occupational and
Professional Licensing
R156-55b
Electricians Licensing Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28611

FILED: 04/13/2006, 09:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After review by the Division, the Electricians Licensing Board and the Construction Services Commission, a few amendments are being proposed to the rule. The major amendment being proposed involves increasing the minimum passing score on required examinations for journeyman and master electricians. Currently to become licensed in the different classifications for journeyman, master, master residential and residential journeyman electrician, a passing score of 70 is required for each section of the examination. The practical section of the examination used to be a written test. However, this examination was changed to a hands-on examination earlier this year due to pressure from the electrical industry. The Construction Services Commission, upon recommendation from the Electricians Licensing Board, has approved changing the passing score on the code and theory sections of the examinations to 75. The practical section of the examination will be changed to a pass or fail grade. The score of 75 will assist in reciprocity or endorsement of licensing from other states. There is also a perception by the Electricians

Licensing Board the proposed changes are necessary to raise the competency level in the electrical industry.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-55b-102(5), deleted a statute citation that is no longer applicable to the definition of "work commonly done by unskilled labor". In Subsection R156-55b-302a(2), amendments are proposed to change the minimum passing score for each section of required examinations for journeyman and master electricians to a "pass" grade on the practical section of the examination and a score of at least 75 on both the theory section and the code section of the examinations. In Subsection R156-55b-302b(3), updated a statute citation reference. In Subsections R156-55b-303(1) and (2), updated rule citations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a), 58-1-202(1)(a), and 58-55-308(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of \$75 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments. The amendments only apply to individuals who are licensed as electricians or who may apply for licensure as electricians.

❖ OTHER PERSONS: The proposed amendments only affect applicants applying for licensure as master, journeyman, master residential or residential journeyman electricians. Initially the Division anticipates there will be a rise in the failure rate of applicants taking the different sections of the electrical examination, but this will be negated over time. For those electrician applicants who do not pass all sections of the examination under the increased score requirements, there will be an additional cost of \$80 per section of the exam that needs to be retaken. The Division is unable to determine how many applicants will be affected as a result of the proposed amendments as the amendments will only affect those applicants who have taken the examinations and have not received a pass score on the practical section or a score of 75 on the theory and code sections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For those electrician applicants who do not pass all sections of the examination under the increased score requirements, there will be an additional cost of \$80 per section of the exam that needs to be retaken.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing includes technical amendments to update references. It also amends the examination requirement based upon changes to the profession and to comply with national standards for purposes of reciprocity. Raising the passing score for the theory examination could potentially cause a fiscal impact to license applicants, but any such impact is outweighed by the benefits of national reciprocity and by the benefit to the public from the licensure of more qualified individuals. Francine A. Giani, 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:

Dennis Meservy at the above address, by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/31/2006 at 9:15 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 4A (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Rules.

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or these rules:

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in these rules means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b) which is hereby adopted and incorporated by reference. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. Other wiring, including wiring under 50 volts is subject to licensing requirements.

(2) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. These installations do not include modification or repair of "Premises Wiring" as defined in the National Electrical Code. Electrical work is minor and incidental only when wiring is extended no more than

ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(3) "Residential project" as used in Subsection 58-55-302(3)(g)(ii) means electrical work performed in residential dwellings under four stories and will include single family dwellings, apartment complexes, condominium complexes and plated subdivisions.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(5) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Tasks such as handling wire on large wire pulls or assisting in moving heavy electrical equipment may utilize unlicensed persons [in accordance with Subsections 58-55-102(11)(b)(i) and (ii)] when the task is performed in the immediate presence of and supervised by properly licensed persons. Tasks that are normally performed by the skilled labor of other trades, such as operating heavy equipment, driving, forming and pouring concrete, welding and erecting structural steel shall not be considered part of the electrical trade.

R156-55b-302a. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), the following examinations, each consisting of a theory section, a code section and a practical section, are approved by the division in collaboration with the board:

- (a) Utah Electrical Licensing Examination for Master Electricians;
- (b) Utah Electrical Licensing Examination for Master Residential Electricians;
- (c) Utah Electrical Licensing Examination for Journeyman Electricians; and
- (d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) The minimum passing score for each section of [each]the examination is ~~70%~~ as follows:

- (a) the applicant must obtain a "pass" grade on the practical section of the examination; and
- (b) the applicant must obtain a score of at least 75 on both the theory section and the code section of the examination.

(3) If an applicant passes any one section of the examination and fails any one or more of the other sections, he is only required to retake the section of the examination failed. There must be a minimum of 30 days between the first test and the retake of any failed section. Test approval letters expire six months from the date of issue. Reapplication for licensure is required to obtain a new test authorization letter.

(4) Admission to the examination is permitted in the form of a letter from the Division after the applicant has completed all requirements for licensure set forth in Sections R156-55b-302b and R156-55b-302c.

(5) An examinee who fails any section of the Utah Electricians Licensing Examination two times shall not be permitted to retake the examination until:

(a) the examinee meets with the board and the board outlines a required remedial program of education or experience of up to one year in length which must be completed before the examinee may again take the examination; and

(b) upon successful completion of the required remedial program of education or experience, the examinee shall apply to the Division to retake the failed portion of the examination a maximum of two times with at least 30 days between tests. Failure to pass all required portions of the examination upon retake shall result in denial of their application for licensure. An applicant continuing to seek licensure must reapply for licensure by filing a new application with the required fee and may do so only after completing additional remedial education and experience as determined by the Division and the Board.

R156-55b-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-55-302(3)(f)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(2) In accordance with Subsection 58-55-302(3)(e)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(3) In accordance with Subsections 58-55-302(3)(c)(~~iii~~) and (~~iii~~)(i), an approved course of study for a graduate of an electrical trade school is a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent.

(4) It shall be the responsibility of the applicant to provide adequate documentation to establish equivalency.

(5) In accordance with Subsection 58-55-302(3)(c)(i), an approved college or university shall be accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology or the Canadian Engineering Accrediting Board.

R156-55b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308a.

KEY: occupational licensing, licensing, contractors, electricians
Date of Enactment or Last Substantive Amendment: [June 15, 2004]2006

Notice of Continuation: January 7, 2002

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-308(1)



**Commerce, Occupational and
Professional Licensing
R156-60c-502
Unprofessional Conduct**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 28603

FILED: 04/10/2006, 09:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to update the American Counseling Association's Code of Ethics from the 1995 edition to the 2005 edition.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-60c-502(19), the American Counseling Association's Code of Ethics is updated to the 2005 edition and also the name of the ethical standards is amended to reflect the current name.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-401 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Deletes the 1995 edition of the American Counseling Association's Ethical Standards and adds the 2005 edition of the American Counseling Association's Code of Ethics

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to reprint the rule once the proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** The proposed amendment does not apply to local governments. The amendment only applies to individuals who are licensed as a professional counselor.

❖ **OTHER PERSONS:** The proposed amendment only applies to individuals who are licensed as a professional counselor. No costs or savings are anticipated as a result of this amendment since the current edition of the Code of Ethics can be obtained via the American Counseling Association's website, which is www.counseling.org.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment only applies to individuals who are licensed as a professional counselor. No costs or savings are anticipated as a result of this amendment since the current edition of the Code of Ethics can be obtained via the American Counseling Association's website, which is www.counseling.org.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing contains a minor technical change to reflect the newest edition of the ethical codes. Therefore, there is no fiscal impact to businesses. Francine A. Giani, 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:

Noel Taxin at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

R156-60c. Professional Counselor Licensing Act Rules.

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;
- (2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);
- (3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;
- (4) engaging in or aiding or abetting deceptive or fraudulent billing practices;
- (5) failing to establish and maintain appropriate professional boundaries with a client or former client;
- (6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;
- (7) engaging in sexual activities or sexual contact with a client with or without client consent;
- (8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;
- (9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;
- (10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the

power imbalance which exists or may exist between the professional counselor and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by the provisions of the American Counseling Association's ~~[Ethical Standards]~~ Code of Ethics, ~~[1995]~~ 2005, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, professional counselors

Date of Enactment or Last Substantive Amendment: ~~July 3, 2003~~ 2006

Notice of Continuation: March 14, 2005

Authorizing, and Implemented or Interpreted Law: 58-60-401; 58-1-106(1)(a); 58-1-202(1)(a)

◆ ————— ◆

Commerce, Real Estate

R162-8-8

Administrative Proceedings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28597

FILED: 04/04/2006, 10:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Provisions that are duplicated in Rule R162-10 are deleted.

SUMMARY OF THE RULE OR CHANGE: Subsections R162-8-8(8.8.1) through R162-8-8(8.8.2.1) are deleted.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Eliminating duplication in one administrative rule has no impact on the State budget.
- ❖ LOCAL GOVERNMENTS: None--Elimination duplication in an administrative rule related to certification of real estate schools and instructors has no impact on local government.
- ❖ OTHER PERSONS: None--Eliminating duplicate provisions in an administrative rule has no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There will be no compliance costs incurred by regulated persons if a duplicate provision is deleted from administrative rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing eliminates duplicative provisions. No fiscal impact to businesses is anticipated by this filing. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.**R162-8. Prelicensing Education.****R162-8-8. Administrative Proceedings.**

8.8 The Division may deny certification or renewal of certification to any school or instructor that does not meet the standards required by this chapter in accordance with Section R162-10 of these rules.

~~8.8.1 Formal adjudicative proceedings. Any adjudicative proceedings as to the following matters shall be conducted on a formal basis:~~

~~8.8.1.1 The revocation or suspension of certification of real estate schools or instructors.~~

~~8.8.2 Informal adjudicative proceedings. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:~~

~~8.8.2.1 The issuance or renewal of certification of real estate schools or instructors.]~~

KEY: real estate business

Date of Enactment or Last Substantive Amendment: ~~[October 21, 2004]~~2006

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5

◆ ————— ◆

Environmental Quality, Air Quality

R307-210-1

Standards of Performance for New Stationary Sources (NSPS)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28601

FILED: 04/07/2006, 14:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule incorporates federal standards by reference. The purpose of the amendments is to add to the Utah rule the amendments in standards that have been made in the federal rule since July 8, 2004. The federal rules already apply to the sources; incorporating them into the state rule allows the Division of Air Quality to enforce the standards. In addition to incorporating the modifications to the standards, specific subparts of 40 CFR Part 60 that are regulated in different rules have been excluded in Rule R307-210.

SUMMARY OF THE RULE OR CHANGE: Amendments in the federal New Source Performance Standards have been made in 40 CFR Part 60, since Utah last incorporated the standards by reference into Rule R307-210. This amendment incorporates the revised federal standards through July 1, 2005, into this rule. The federal rules already apply to the sources; incorporating them into the state rule allows the Division of Air Quality to enforce the standards. Although there were three modifications to the standards since July 8, 2004, the following is the only modification that would impact sources in Utah. On February 22, 2005 (70 FR 8523), EPA promulgated amendments to the NSPS for subpart AA regarding performance for steel plants electric arc furnaces. This amendment allows plants to use a bag leak detection system on all single stack fabric filters as an alternative monitoring option to continuous opacity monitoring system (COMS). Specifically, this amendment allows plants to use a bag leak detection system on all single stack fabric filters as an alternative monitoring option to COMS. Owners or operators are required to develop a site-specific monitoring plan describing how the system will be selected, installed, and operated, including how the alarm levels will be established. In the event a bag leak detection system alarm is triggered, the owner or operator must initiate corrective action to determine the cause of the alarm within one hour of the alarm and alleviate the cause of the alarm within three hours. An approved site-specific monitoring plan may allow more than

three hours for alleviating a specified condition where an explanation is provided justifying a longer time period. The owner or operator also must conduct an opacity observation at least once per day when the furnace is in the melting and refining period, in accordance with EPA Method 9 (40 CFR part 60, appendix A). All opacity observations greater than 3% opacity must be reported as a violation of the opacity standard. In addition, if the alarm on the bag leak detection system was not alarming during the time the opacity was observed to be greater than 3%, the alarm on the bag leak detection system must be lowered to a point that an alarm would have occurred during the observation. In addition, to incorporating the modifications to the standards, specific subparts of 40 CFR Part 60 that are regulated in different rules have been excluded in Rule R307-210.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-104 and 19-2-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR Part 60, July 1, 2005, except for Subparts Cb, Cc, Cd, Ce, BBBB, and DDDD

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no change in cost to the state budget, as the affected sources already are included in state rules, and thus already are subject to inspection and compliance review.

❖ LOCAL GOVERNMENTS: Because the amendment does not create new requirements for sources owned or operated by local government, no change in costs is expected for other persons

❖ OTHER PERSONS: This amendment gives sources an alternative monitoring option to COMS. Because this new rule does not create new requirements, no change in costs is expected for other persons. Though specific savings cannot be identified, they are likely to be small.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment gives sources an alternative monitoring option to COMS. Because this new rule does not create new requirements, no change in costs is expected for affected persons. Though specific savings cannot be identified, they are likely to be small.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The federal amendments increase flexibility for sources and fine-tune existing requirements. Sources will see some opportunity for savings, and no increased costs are expected. Dianne R. Nielson, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/18/2006 at 2:00 PM, DEQ Building, 150 N 1950 W, Main Conference Room, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2006

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality. R307-210. Stationary Sources.

R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on ~~July 1, 2004, and amended by 64 FR 41346 (July 8, 2004)~~ July 1, 2005, except for Subparts Cb, Cc, Cd, Ce, BBBB, and DDDD, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "executive secretary" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
Date of Enactment or Last Substantive Amendment: ~~April 19, 2005~~ 2006
Notice of Continuation: August 15, 2001
Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-2-108



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-49

Dental Service

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28618

FILED: 04/14/2006, 16:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Funding was not provided for the adult dental program by the 2006 Utah Legislature. This rulemaking is necessary to reflect that action.

SUMMARY OF THE RULE OR CHANGE: In Section R414-49-3, additional wording is added that defines who can receive treatment. In Section R414-49-5, the wording about specific services is deleted and "covered dental services" is added. In Subsection R414-49-5(6)(a), the stipulation for adults and children is deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rulemaking saves the general fund \$3,278,625 and matching federal funds of \$7,756,800 for a total of \$11,035,425.

❖ LOCAL GOVERNMENTS: Local governments do not provide dental services therefore there is no impact to local governments.

❖ OTHER PERSONS: Providers may lose up to \$11,035,425 in Medicaid reimbursements for services they may no longer provide as a result of this rulemaking. Medicaid clients, if they obtain the same services and pay out-of-pocket will be required to pay \$27,000,000 for those services because of the higher, non-Medicaid rates they will have to pay.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is an average annual loss of \$19,463 in Medicaid reimbursements to a single dental provider for services that the provider may no longer provide to Medicaid clients. This is based on the total number of 567 Medicaid dentists and the estimate of one visit per year by a single client. The average Medicaid cost per client for dental care is about \$250. The result of this rulemaking will require each Medicaid client who obtains the service and pays out-of-pocket to pay about \$600 for the same care.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will reduce the number of Medicaid recipients eligible to receive dental services and is necessary to stay within appropriations. David N. Sundwall, MD, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-49. Dental Service.

R414-49-3. Client Eligibility Requirements.

Dental services are available to categorically and medically needy clients age 20 and younger or who are pregnant.

R414-49-5. Service Coverage.

~~[Specific services are identified for adults and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.]~~ Covered dental services:

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only for either a child or an adult.

(b) A limited problem-focused oral evaluation for a child or an adult.

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) Adult: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for adults.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth, or permanent second molars for adults.

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions ~~[for adults and children]~~.

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:
Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) Adult: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Prior authorization is required for gingivectomies, full mouth debridements, dentures, partial dentures, porcelain to metal crowns and general anesthesia procedures.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 1, 2005~~ **2006**

Notice of Continuation: November 12, 2004

Authorizing and Implemented or Interpreted Law: 26-1-5; 26-18-3



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-50
Dental, Oral and Maxillofacial Surgeons

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28619

FILED: 04/14/2006, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Funding was not provided for adult dentures by the 2006 Utah Legislature. This rulemaking is necessary to reflect that action.

SUMMARY OF THE RULE OR CHANGE: In Section R414-50-3, additional wording is added that defines who can receive treatment. In Subsection R414-50-5(1), the word "dental" is added in two different sentences. Subsection R414-50-5(3) is a new subsection that defines who is covered for work by an oral surgeon. The rest of the subsections are renumbered.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rulemaking saves the general fund \$638,668 and matching federal funds of \$1,511,007 for a total of \$2,149,675.

❖ LOCAL GOVERNMENTS: Local governments do not provide dental services, therefore there is no impact to local governments.

❖ OTHER PERSONS: Providers may lose approximately \$2,149,675 in Medicaid reimbursements for services that they may no longer provide as a result of this rulemaking. Medicaid clients, if they obtain the same services and pay for them out-of-pocket will experience an aggregate cost of about \$4,300,000 because they will pay for the service at a higher, non-Medicaid rate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single Medicaid denture provider may lose approximately \$12,426 annually for services that the provider no longer provides. This is based on the total number of 173 Medicaid denture providers who provides dentures once per year for each Medicaid client. Full dentures under Medicaid cost \$900 per client. A Medicaid client who obtains dentures and pays for them out-of-pocket will pay about \$1,800 for the same full dentures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will reduce the number of Medicaid recipients eligible to receive dentures and is necessary to stay within appropriations. David N. Sundwall, MD, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-50. Dental, Oral and Maxillofacial Surgeons.

R414-50-3. Client Eligibility Requirements.

Oral and maxillofacial surgery service is available to categorically and medically needy clients who are ages 20 and younger or who are pregnant. [~~Dental services to non-pregnant adults ages 21 and older are limited to emergency services only.~~]

R414-50-5. Service Coverage.

(1) Emergency dental services are covered services. Emergency dental services provided by a dentist in areas where an oral and maxillofacial surgeon is unavailable are covered services.

(2) Appropriate general anesthesia necessary for optimal management of the emergency is a covered service.

(3) Physician services and medical and surgical services if performed by an oral surgeon are covered for all recipient age groups and not subject to section (4) above.

(4) Hospitalization of patients for dental surgery may be a covered service if a patient's physician, at the time of the proposed hospitalization, verifies that the patient's general health status dictates that hospitalization is necessary for the health and welfare of the patient.

(~~4~~) Treatment of temporomandibular joint fractures is a covered service. All other temporomandibular joint treatments are not covered services.

(~~5~~) For procedures requiring prior approval, Medicaid shall deny payment if the services are rendered before prior approval is obtained. Exceptions may be made for emergency services, or for recipients who obtain retroactive eligibility. The provider must apply for approval as soon as is practicable after the service is provided.

(~~6~~) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth, is not a covered service.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~January 28, 2004~~]**2006**

Notice of Continuation: November 3, 2004

Authorizing and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3



Human Services, Child and Family Services

R512-11

Accommodation of Moral and Religious Beliefs and Culture

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 28612

FILED: 04/13/2006, 13:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division establishes by the authority of Section 62A-4a-120 a rule to define the Division's procedures to accommodate the moral beliefs, religious beliefs, and culture of the children and families it serves.

SUMMARY OF THE RULE OR CHANGE: The Division recognizes that children and families have the right to be understood within the context of their family's moral beliefs, religious beliefs, and culture. When intervening with a family, Division workers shall ask the family to identify aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the care and placement of the child. The Division shall make reasonable efforts to accommodate the family's moral beliefs, religious beliefs, and culture when providing services. The family impact of this rule will be an increased accommodation by the Division of the specific moral beliefs, religious beliefs, and culture for each individual child and family it serves. This accommodation should improve the cooperative relationship between the Division and children and families.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-120

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 U.S.C. 1996b; 25 U.S.C. 1901-63; 42 U.S.C. 1305; and 42 U.S.C. 2000bb1-4

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The finance director for the Division reviewed possible anticipated costs or savings to the state budget due to this rule. It was determined that this rule will not increase costs or savings to the Division budget. Services will be provided within the current budget.

❖ LOCAL GOVERNMENTS: After a careful review of the possible impact of costs or savings on local government by the finance director for the Division, it was determined that there will be no increased costs or savings.

❖ OTHER PERSONS: The finance director for the Division reviewed possible anticipated costs or savings to other persons due to this rule. It was determined that the families affected by this rule will not see an increase in costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Families that are involved with the Division may have compliance costs if they elect to hire an attorney to represent them at court proceedings or administrative hearings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Miller or Adam F Trupp at the above address, by phone at 801-538-4451 or 801-538-4462, by FAX at 801-538-3993 or 801-538-4016, or by Internet E-mail at CAROLMILLER@utah.gov or AFTRUPP@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.

R512-11. Accommodation of Moral and Religious Beliefs and Culture.

R512-11-1. Authority.

A. The Division establishes by the authority of Section 62A-4a-120 a rule to define the Division's procedures to accommodate the moral beliefs, religious beliefs, and culture of the children and families it serves. The Division incorporates by reference the following Federal statutes: 42 U.S.C. 1996b; 25 U.S.C. 1901-63; 42 U.S.C. 1305; 42 U.S.C. 2000bb1-4.

R512-11-2. Definitions.

A. Accommodate means to adapt, adjust, or make provision to support.

B. Child and Family Plan means the collective intentions of the Child and Family Team documenting specific goals, roles, strategies, resources, and schedules for coordinated provision of assistance, supports, supervision, and services for the child, caregiver, and parents or guardians.

C. Child and Family Team means a group that may consist of the child, the child's family, the Division caseworker, the out-of-home provider, relatives, representatives of the family's moral beliefs, religious beliefs, and culture, representatives from education, health care, and law enforcement, the guardian ad litem, the parents' attorney, the attorney general, and other supportive individuals as designated by the family.

D. Culture means the totality of socially transmitted behavior patterns characteristic of a family and includes moral beliefs and religious beliefs.

E. Religious beliefs means faith or conviction in a system of principles or worship relating to the sacred and uniting its adherents in a community.

R512-11-3. Division Responsibilities.

A. The Division recognizes that children and families have the right to be understood within the context of their family's moral beliefs, religious beliefs, and culture.

B. When intervening with a family, Division workers shall ask the family to identify aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the care and placement of the child.

C. The Division shall convene a Child and Family Team when engaging children and families.

1. The Child and Family Team shall discuss with the child and family any aspects of their moral beliefs, religious beliefs, and culture that they wish to have accommodated.

2. The Child and Family Plan shall document the moral beliefs, religious beliefs, and culture of the child and family and the accommodations requested by the child and family. It shall document the method the Division will employ to make the accommodation or the reasons that accommodation is not reasonable or proper.

3. The decisions of the Child and Family Team related to accommodations of moral beliefs, religious beliefs, and culture shall be documented in the Child and Family Plan. Any accommodation that cannot be provided shall be explained to the child and family and noted in the Child and Family Plan.

4. When the Division is not able to accommodate exactly some aspect of the family's moral beliefs, religious beliefs, or culture, the Child and Family Team may explore the best way to accommodate the moral beliefs, religious beliefs, or culture of the child and family.

5. The accommodations in the Child and Family Plan shall be periodically reviewed with the parents or caregivers, along with all other requirements, to assure that the moral beliefs, religious beliefs, and culture of the child and family are met according to the requirements of the Child and Family Plan.

D. The planning and implementation of all other activities provided by the Division that do not require a Child and Family Team shall identify in the Child and Family Plan aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the service. Documentation shall identify any requested accommodation and the method the Division employs to make accommodation for the child and family or the reasons accommodation is not reasonable or appropriate.

KEY: child welfare

Date of Enactment or Last Substantive Amendment: June 1, 2006

Authorizing, Implemented, or Interpreted Law: 62A-4a-105; 62A-4a-106; 62A-4a-120

◆ ————— ◆

Human Services, Child and Family
Services
R512-203
Child Protective Services, Significant
Risk Assessments

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 28613

FILED: 04/13/2006, 13:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish Division procedures for completing a significant risk assessment to determine whether a juvenile is a significant risk to other children or the community and identifying the need for services.

SUMMARY OF THE RULE OR CHANGE: The Division shall conduct an assessment, following a report of abuse to the Division, of a suspected juvenile perpetrator for the purpose of determining risk to other children and the community. The assessment shall be based upon the facts of the case that are present during the Child Protective Services investigation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-101 and 62A-4a-116.1

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The finance director for the Division carefully reviewed possible anticipated costs or savings to the state budget because of this rule. It was determined that this rule clarifies existing practice and will not increase costs or savings to the Division budget. Services will be provided within the current budget.

❖ LOCAL GOVERNMENTS: After careful review by the Division's finance director of possible impact of anticipated costs or savings to local government, it was determined that there will be no increased cost or savings.

❖ OTHER PERSONS: After careful review by the Division's finance director of possible impact of possible anticipated costs or savings to other persons, it was determined that there will be no cost to or saving to a family or youth to administer this risk assessments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: After careful review by the Division's finance director of possible compliance costs for affected persons, it was determined that there will be no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Miller or Adam F Trupp at the above address, by phone at 801-538-4451 or 801-538-4462, by FAX at 801-538-3993 or

801-538-4016, or by Internet E-mail at CAROLMILLER@utah.gov or AFTRUPP@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.**R512-203. Child Protective Services, Significant Risk Assessments.****R512-203-1. Authority and Purpose.**

Pursuant to Section 62A-4a-105, the Division of Child and Family Services (DCFS) is authorized to provide Child Protective Services (CPS). DCFS is required by Section 62A-4a-116.1(4)(a) to promulgate a rule for making significant risk assessments.

R512-203-2. Definitions.

A. Assessment means an evaluation made to determine if a minor is a risk to other children and whether or not a minor's name should be retained on the Licensing Information System.

B. Significant risk means that a minor is likely to continue perpetrating against other children.

R512-203-3. Significant Risk Assessments.

A. During the course of a CPS investigation involving allegations of conduct by a juvenile that is identified as severe or chronic as those terms are defined in Sections 62A-4a-101 and 62A-4a-116.1, the CPS worker shall complete a significant risk assessment to determine whether a juvenile is a significant risk to other children or the community.

B. To conduct this assessment the CPS worker shall use the assessment tool developed by DCFS for the purpose of determining risk presented by the minor. The tool used will be the most current version of the significant risk assessment.

C. The assessment shall be based upon the facts of the case that are present during the CPS investigation.

D. The assessment process identified in Section R512-203-3A shall not be used to determine whether the allegation under investigation is supported or unsupported.

E. The juvenile's age alone is not a reason for determining whether the juvenile presents a significant risk.

F. The completed significant risk assessment instrument for each minor assessed shall be made a part of the CPS record and shall be classified as Private pursuant to the Government Records Management and Access Act.

KEY: child welfare, child abuse

Date of Enactment or Last Substantive Amendment: June 1, 2006

Authorizing, Implemented, or Interpreted Law: 62A-4a-105; 62A-4a-116.1

◆ ————— ◆

Human Services, Child and Family
Services

R512-300-4

Division Responsibility to a Child
Receiving Out of Home Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28614

FILED: 04/13/2006, 13:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to change the wording in three of our permanency goals.

SUMMARY OF THE RULE OR CHANGE: The Division will change the wording of three permanency goals as follows: 1) "Return home" will be changed to "Reunification"; 2) "Custody and Guardianship" will be changed to "Guardianship (Relative)"; and 3) "Independent Living" will be changed to "Guardianship (Non-Relative)".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-105 and 62A-4a-106

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: After careful review by the Division's finance director, it was determined that this rule amendment will not increase costs or saving to the Division because this is a change in wording only. Services will be provided within the current budget.

❖ LOCAL GOVERNMENTS: After careful review by the Division's finance director of any possible impact to anticipated costs or savings for local government, it was determined that there will be no increased costs or savings.

❖ OTHER PERSONS: After careful review by the Division's finance director of any possible impact to anticipated costs or savings for other persons, it was determined that the families affected by this rule amendment should not see an increase in costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: After careful review by the Division's finance director of any possible compliance costs for affected persons, it was determined that families that are involved with the Division should not see an increase in costs or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W

SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Miller or Adam F Trupp at the above address, by phone at 801-538-4451 or 801-538-4462, by FAX at 801-538-3993 or 801-538-4016, or by Internet E-mail at CAROLMILLER@utah.gov or AFTRUPP@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Richard Anderson, Director

**R512. Human Services, Child and Family Services.
R512-300. Out of Home Services.**

R512-300-4. Division Responsibility to a Child Receiving Out of Home Services.

A. Child and Family Team

1. With the family's assistance, a child and family team shall be established for each child receiving out of home services.

2. At a minimum, the child and family team shall assist with assessment, child and family plan development, and selection of permanency goals; oversee progress towards completion of the plan; provide input into adaptations to the plan; and recommend placement type or level.

B. Assessment

1. A written assessment is completed for each child placed in custody of the Division through court order or voluntary placement and for the child's family.

2. The written assessment evaluates the child and family's strengths and underlying needs.

3. The type of assessment is determined by the unique needs of the child and family, such as cultural considerations, special medical or mental health needs, and permanency goals.

4. Assessment is ongoing.

C. Child and Family Plan

1. Based upon an assessment, each child and family receiving out of home services shall have a written child and family plan in accordance with Section 62A-4a-205.

2. The child's parent or guardian and other members of the child and family team shall assist in creating the plan based on the assessment of the child and family's strengths and needs.

3. In addition to requirements specified in Section 62A-4a-205, the child and family plan shall include the following to facilitate permanency:

a. The current strengths of the child and family as well as the underlying needs to be addressed.

b. A description of the type of placement appropriate for the child's safety, special needs and best interests, in the least restrictive setting available and, when the goal is reunification, in reasonable proximity to the parent. If the child with a goal of reunification has not been placed in reasonable proximity to the parent, the plan shall describe reasons why the placement is in the best interests of the child.

c. Goals and objectives for assuring the child receives safe and proper care including the provision of medical, dental, mental health, educational, or other specialized services and resources.

d. If the child is age 16 or older, a written description of the programs and services to help the child prepare for the transition from foster care to independent living in accordance with Rule R512-305.

e. A visitation plan for the child, parents, and siblings, unless prohibited by court order.

f. Steps for monitoring the placement and plan for worker visitation and supports to the out of home caregiver for a child placed in Utah or out of state.

g. If the goal is adoption or placement in another permanent home, steps to finalize the placement, including child-specific recruitment efforts.

4. The child and family plan is modified when indicated by changing needs, circumstances, progress towards achievement of service goals, or the wishes of the child, family, or child and family team members.

5. A copy of the completed child and family plan shall be provided to the parent or guardian, out of home caregiver, juvenile court, assistant attorney general, guardian ad litem, legal counsel for the parent, and the child, if the child is able to understand the plan.

D. Permanency Goals

1. A child in out of home care shall have a primary permanency goal and a concurrent permanency goal identified by the child and family team.

2. Permanency goals include:

- a. ~~[Return home]~~ Reunification.
- b. Adoption.
- c. ~~[Custody and Guardianship]~~ Guardianship (Relative).
- d. ~~[Independent Living]~~ Guardianship (Non-Relative).
- e. Individualized Permanency.

3. For a child whose custody is court ordered, both primary and concurrent permanency goals shall be submitted to the court for approval.

4. The primary permanency goal shall be return home unless the court has ordered that no reunification efforts be offered.

5. A determination that independent living services are appropriate for a child does not preclude adoption as a primary permanency goal. Enrollment in independent living services can occur concurrently with continued efforts to locate and achieve placement of an older child with an adoptive family.

E. Placement

1. A child receiving out of home services shall receive safe and proper care in an appropriate placement according to placement selection criteria specified in Rule R512-302.

2. The type of placement, either initial or change in placement, is determined within the context of the child and family team utilizing a need level screening tool designated by the Division.

3. Placement decisions are based upon the child's needs, strengths and best interests.

4. The following factors are considered in determining placement:

- a. Age, special needs, and circumstances of the child;
- b. Least restrictive placement consistent with the child's needs;
- c. Placement of siblings together;
- d. Proximity to the child's home and school;
- e. Sensitivity to cultural heritage and needs of a minority child;

f. Potential for adoption.

5. A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the out of home caregiver or the child involved.

6. Placement of an Indian child shall be in compliance with the Indian Child Welfare Act, 25 USC Section 1915, which is incorporated by reference.

7. When a young woman in Division custody is mother of a child, and desires and is able to parent the child with the support of the out of home caregiver, the child shall remain in the out of home placement with the mother. The Division shall only petition for custody of the young woman's child if there are concerns of abuse, neglect, or dependency in accordance with Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

8. The child and family team may recommend an independent living placement for a child age 16 year or older in accordance with Rule R512-305 when in the child's best interests.

G. Federal Benefits

1. The Division may apply for eligibility for Title IV-E foster care and Medicaid benefits for a child receiving out of home services. Information provided by the parent or guardian, as specified in Rule R512-301, shall be utilized in determining eligibility.

2. The Division may apply to be protective payee for a child in custody who has a source of unearned income, such as Supplemental Security Income or Social Security income. A trust account shall be maintained by the Division for management of the child's income. The unearned income shall be utilized only towards costs of the child's care and personal needs in accordance with requirements of the regulating agency.

H. Visitation with Familial Connections

1. The child has a right to purposeful and frequent visitation with a parent or guardian and siblings, unless the court orders otherwise.

2. Visitation is not a privilege to be earned or denied based on behavior of the child or the parent or guardian.

3. Visitation may be supplemented with telephone calls and written correspondence.

4. The child also has a right to communicate with extended family members, the child's attorney, physician, clergy, and others who are important to the child.

5. Intensive efforts shall be made to engage a parent or guardian in continuing contacts with a child, when not prohibited by court order.

6. If clinically contraindicated for the child's safety or best interests, the Division may petition the court to deny or limit visitation with specific individuals.

7. Visitation and other forms of communication with familial connections shall only be denied when ordered by the court.

8. A parent whose parental rights have been terminated does not have a right to visitation.

I. Out of Home Worker Visitation with the Child

1. The out of home worker shall visit with the child to ensure that the child is safe and is appropriately cared for while in an out of home placement. If the child is placed out of the area or out of state, arrangements may be made for another worker to perform some of the visits. The child and family team shall develop a specific plan for the worker's contacts with the child based upon the needs of the child.

J. Case Reviews

1. Pursuant to Sections 78-3a-311.5, 73-3a-312, and 78-31-313, periodic reviews of court ordered out of home services shall be held no less frequently than once every six months.

2. The Division shall seek to ensure that each child receiving out of home services has timely and effective case reviews and that the case review process:

- a. Expedites permanency for a child receiving out of home services,
- b. Assures that the permanency goals, child and family plan, and services are appropriate,
- c. Promotes accountability of the parties involved in the child and family planning process, and
- d. Monitors the care for a child receiving out of home services.

KEY: social services, child welfare, domestic violence, child abuse

Date of Enactment or Last Substantive Amendment: [September 3, 2003] June 1, 2006

Authorizing, Implemented, or Interpreted Law: 62A-4a-105



**Public Service Commission,
Administration
R746-345-3
Tariffs and Contracts**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28615

FILED: 04/13/2006, 13:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide for the provision of cost information relating to make-ready work involving electric utility pole space alone or all make-ready work.

SUMMARY OF THE RULE OR CHANGE: When make-ready work entails changes to equipment in an electric utility's pole space, the rule amendment identifies how an applicant for a pole attachment may obtain cost information for all make-ready work required to accommodate the proposed attachment or just that associated with make-ready work involving the electric utility's pole space and affected equipment.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--State agency activity in relation to pole attachment activities will stay the same.
- ❖ **LOCAL GOVERNMENTS:** None--Local government activities are not affected by this rule. Local governments are not pole owners and are not regulated by this rule, nor by the Commission.

❖ **OTHER PERSONS:** None--Compliance with the rule should not entail any additional costs; any savings are anticipated to be minimal (see "Compliance costs for affected persons" below).

COMPLIANCE COSTS FOR AFFECTED PERSONS: For an affected pole owner, there should be no compliance costs as the cost information that is to be provided is already being complied. The rule amendment simply requires that the cost information be presented, if requested, in two sub-categories (costs associated with the electric utility pole space and costs associated with all other pole space, rather than being combined into one cost estimate for all affected pole space). There are no compliance costs for those entities who may request a pole owner to provide the cost information in the two categories.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The existing rule allows a pole attacher to perform make-ready work needed to accommodate the attacher's pole attachment, and incur the costs of such work, or have the pole owner perform the work and reimburse the pole owner for the costs incurred by the pole owner. The current rule also restricts changes to an electric utility's equipment to be performed only by the electric utility. With the rule amendment, a prospective pole attacher will now be able to obtain cost information for the costs associated with the electric utility performing all make-ready work or just that limited to the electric utility's equipment in the electric utility's pole space. This will allow the prospective pole attacher to determine whether it desires to perform the make-ready work not associated with the electric utility's equipment if it believes it can perform that make-ready work for less than the estimated cost given by the pole owner. Ric Campbell, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Barbara Stroud at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at bstroud@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2006

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.**R746-345. Pole Attachments.****R746-345-3. Tariffs and Contracts.**

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

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

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract, and SGAT shall also include:

- a. a description of the permitting process, the inspection process, the joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;
- b. emergency access provisions; and
- c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

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

1. Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

C. Make-Ready Work, Timeline and Cost Methodology -- As a part of the application process, the pole owner shall provide the applicant with an estimate of the cost of the make-ready work required and the expected time to complete the make-ready work as provided for in this sub-section. All applications by a potential attacher within a given calendar month shall be counted as a single application for the purposes of calculating the response time to complete the make-ready estimate for the pole owner. The due date for a response to all applications within the calendar month shall be calculated from the date of the last application during that month. As an alternative to all of the time periods allowed for construction below, a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay. Pole owners must provide this alternative estimate within the estimate timelines provided below. Applications that plan to consider self-building shall inform the pole owner at the time of application that they are considering the self-build option and they would like a two-alternative make-ready bid. In the first alternative, the pole owner would be responsible for all necessary make-ready work. For the second alternative, the pole owner would be responsible only for the make-ready work that is required in the electrical utility space on the poles.

1. For applications up to 20 poles, the pole owner shall respond with either an approval or a rejection within 45 days. At the same time as an approval is given, a completed make-ready estimate must be provided to the applicant explaining what make-ready work must be done, the cost of that work, and the time by which the work would be finished, that is no later than 120 days from receiving an initial deposit payment for the make-ready work.

2. For applications that represent greater than 20 poles, but equal to or less than .5% of the pole owner's poles in Utah, or 300 poles, whichever is lower, the time for the pole owner's approval and make-ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

3. For applications that represent greater than the number of poles calculated in section 3(2)(C)(2) above, but equal to or less than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the time for the approval and make-ready estimate shall be extended to 90 days, and the time for construction will be extended to 180 days.

4. For applications that represent greater than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make-ready estimate and make-ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make-ready estimate and construction period information should be delivered or to arbitrate the negotiations.

5. If the pole owner rejects any application, the pole owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole owner's stated reasons are sufficient grounds for rejection.

6. For all approved applications, the applicant will either accept or reject the make-ready estimate. If it accepts the make-ready estimate and make-ready construction time line, the work must be done by the pole owner on schedule and for the estimated make-ready amount, or less, and the applicant will be billed for actual charges up to the bid amount.

7. Applicants must pay 50% of the make-ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.

8. If the applicant rejects the make-ready estimate for an approved application for whatever reason, the applicant may, at its own expense, use approved contractors to self-build the required make-ready work subject to the pole owner's inspection. The self-build option is available only for make-ready work outside of the electrical utility space.

D. Pole Attachment Placement -- All new copper cable attachments shall be placed at the lowest level permitted by applicable safety codes. In cases where an existing copper attachment has been placed in a location higher than the minimum height the safety codes require, the pole owner shall determine if the proposed attachment may be safely attached either above or below the existing copper attachment taking account of midspan clearances and potential crossovers. If these attachment locations, above or below the copper cable, comply with the applicable safety code, the attacher may attach to the pole without paying to move the copper cable. The owner of the copper cable may elect to pay the costs of having the cable moved to the lowest position as part of the attachment process, or it may elect to move the cable

themselves prior to the attaching entity's attachment. If the copper cable must be moved in order for the attacher to be able to safely make its attachment, the attacher shall pay the costs associated with moving the existing copper cable.

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

Date of Enactment or Last Substantive Amendment: ~~February 8, 2006~~

Notice of Continuation: August 8, 2003

Authorizing, and Implemented or Interpreted Law: 54-4-13

Transportation, Administration

R907-68

Prioritization of New Transportation Capacity Projects

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 28617

FILED: 04/14/2006, 14:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is needed to make grammatical changes and to include text in the definition section that was inadvertently left off.

SUMMARY OF THE RULE OR CHANGE: This amendment adds "retail sales" to the definition of "economic development." It also makes various grammatical corrections (in Section R907-68-1) and wording changes to improve readability (see Section R907-68-4).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-304

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This change may increase the possibility of new transportation projects, which would have a greater cost, but it is impossible to estimate how the change would affect cost.

❖ **LOCAL GOVERNMENTS:** This change may increase the possibility of new transportation projects, which would have a greater cost, but it is impossible to estimate how the change would affect cost.

❖ **OTHER PERSONS:** This rule does not affect nongovernmental persons as they are not involved in the prioritization process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs to comply with this rule as it does not require licensing or any type of compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no affect on costs

for business as it only affects government transportation projects. John R. Njord, Executive Director

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

TRANSPORTATION
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: John R. Njord, Executive Director

R907. Transportation, Administration.

R907-68. Prioritization of New Transportation Capacity Projects.

R907-68-1. Definitions.

(1) "ADT" means Average Daily Traffic, which is the volume of traffic on a road, annualized to a daily average.

(2) "Capacity" means the maximum hourly rate at which vehicles reasonably can be expected to traverse a point or a uniform section of a lane or roadway during a given time period under prevailing roadway, traffic, and control conditions.

(3) "Commission" means the Transportation Commission, which is created in Utah Code Ann. Section 72-1-301.

(4) "Economic Development" may include such things as employment growth, employment retention, retail sales, tourism growth, freight movements, tax base increase, and traveler or user cost savings in relation to construction costs.

(5) "Functional Classification" means the description of the road as one of the following:

- (a) Rural Interstate;
- (b) Rural Other ~~Principle~~ Principal Arterial;
- (c) Rural Minor Arterial;
- (d) Rural Major Collector;
- (e) Urban Interstate;
- (f) Urban Other Freeway and Expressway;
- (g) Urban Other ~~Principle~~ Principal Arterial;
- (h) Urban Minor Arterial;
- (i) Urban Collector;

(6) "Major New Capacity Project" means a transportation project that costs more than \$5,000,000 and accomplishes any of the following:

- (a) Add new roads and interchanges;
- (b) Add new lanes;
- (c) Modify existing interchange(s) for capacity or economic development purpose.

(7) "MPO" as used in this section means metropolitan planning organization as defined in Utah Code Ann. Section 72-1-208.5.

(8) "Safety" means an analysis of the current safety conditions of a transportation facility. It includes an analysis of crash rates and crash severity.

(9) "Strategic Goals" means the Utah Department of Transportation Strategic Goals.

(10) "Strategic Initiatives" means the implementation strategies the Department will use to achieve the "Strategic Goals".

(11) "Transportation Efficiency" is the roadway attributes such as ADT, Truck ADT, Volume to Capacity Ratio, roadway Functional Classification, and Transportation Growth.

(12) "Transportation Growth" means the projected percentage of average annual increase in ADT.

(13) "Truck ADT" means the ADT of truck traffic on a road, annualized to a daily average.

(14) "Volume to Capacity Ratio" means the ratio of hourly volume of traffic to capacity for a transportation facility (measure of congestion).

R907-68-3. Application of Strategic Initiatives to Projects.

The Department will use the Strategic Goals to guide the process:

(1) The Department will first seek to preserve current infrastructure and to optimize the capacity of the existing highway infrastructure before applying funds to increase capacity by adding new lanes.

(2) The Department will address means to improve the capacity of the existing system through technology like intelligent transportation systems, access management, transportation demand management, and others.

(3) The Department will assess safety through projects addressed in paragraph (1) and (2) above. The Department will also target specific highway locations for safety improvements.

(4) Adding new capacity projects will be recommended after considering items in paragraph (1), (2) and (3).

(5) All recommendations will be forwarded to the Transportation Commission for ~~its~~their review/action.

R907-68-4. Prioritization of Major New Capacity Projects List.

(1) Major New Capacity Projects will be compiled from the State of Utah Long Range Transportation Plan.

(2) The list will be first prioritized based upon Transportation Efficiency Factors, and Safety Factors. Each criterion of these factors will be given a specific weight.

(3) The Major New Capacity Projects will be ranked from highest to lowest with priority being assigned to the projects with highest overall rankings.

(4) The ~~Transportation~~ Commission will further evaluate the projects with highest rankings considering contributing components that include other factors such as Economic Development.

(5) For each Major New Capacity Project, the Department will provide a description of how completing that project will fulfill the Department's strategic goals.

(6) ~~In the final selection process, the Commission may consider other factors not listed above. Its decision will~~The Transportation Commission may consider other factors not listed above, in the final selection process. Their decision shall be made in a public meeting forum.

KEY: transportation commission, transportation, roads, capacity
Date of Enactment or Last Substantive Amendment: ~~January 4,~~
2006

Authorizing, and Implemented or Interpreted Law: 72-1-201



Transportation, Motor Carrier, Ports of Entry **R912-9** Pilot/Escort Requirements and Certification Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28616

FILED: 04/14/2006, 11:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being amended at this time because it needs further clarification.

SUMMARY OF THE RULE OR CHANGE: The amendment lists necessary clarifications regarding pilot/escort lighting requirements, vehicle equipment requirements, and pre-trip planning and coordination requirements for police escorts.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 72-1-201 and 72-7-406

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There may be some impact on the budget if Utah Highway Patrol (UHP) vehicles do not have all necessary equipment. However, it is impossible to know what the cost would be because we do not know what vehicles already have the equipment.

❖ **LOCAL GOVERNMENTS:** There may be some impact on the budget if police vehicles do not have all necessary equipment. However, it is impossible to know what the cost would be because we do not know what vehicles already have the equipment.

❖ **OTHER PERSONS:** Vehicles may need to add a cone, which is estimated to cost about \$5.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional costs are minimal associated with the amendments to this rule. Amendment lists clarification to already enacted equipment requirements, with the exception of an additional cone requirement listed under Subsection R912-9-12(g). Estimated cost for one cone is less than \$5.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has the obligation to protect the public safety on the highways.

Regulating pilot/escort and oversize vehicles is a necessary part of that. The costs of compliance are insignificant compared to the public benefit. John R. Njord, Executive Director

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

TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: John R. Njord, Executive Director

R912. Transportation, Motor Carrier, Ports of Entry.

R912-9. Pilot/Escort Requirements and Certification Program.

R912-9-5. Driver Certification Process.

(1) Drivers domiciled in Utah must complete a pilot/escort certification course authorized by the Department. A list of authorized instructors may be obtained by contacting (801) 965-4508.

(2) Pilot/ Escort drivers domiciled outside of Utah may operate as a certified pilot/escort driver with another State's certification credential, provided the course meets the minimum requirements outlined in the Pilot/ Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance; and/or

(3) The Department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the Department. For a current listing of these states, contact the Central Permit Office at 801-965-4302.

(4) Pilot/escort driver certification expires four years from the date issued. It will be the responsibility of the driver to maintain certification.

R912-9-8. Pilot/Escort Vehicle Standards.

(1) Pilot/Escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Sections 41-1a-201 and 41-1a-401.

(2) Equipment ~~[and load]~~ shall not reduce visibility or mobility of pilot/escort vehicle while in operation.

(3) Trailers may not be towed at any time while in pilot/escort operations.

(4) Pilot/escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile. Radio communications must be compatible with accompanying pilot/escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(5) Pilot/Escort vehicles may not carry a load.

R912-9-9. Pilot/Escort Vehicle Signing Requirements.

(1) Sign requirements on pilot/escort vehicles are as follows:

(a) Pilot escort vehicles must display an "Oversize Load" sign, which ~~shall~~ must be mounted on the top of the pilot/escort vehicle.

(b) Signs must be a minimum of 5 feet wide by 10 inch[es] high visible surface space~~[-in size]~~, with a solid yellow background and 8 inch high by 1-inch wide black letters. Solid defined as: when being viewed from the front or rear at a 9-degree angle, no light can transmit through.

(c) The sign for the front/pilot escort vehicle shall be displayed so as to be clearly legible and readable by oncoming traffic at all times.

(d) The rear pilot/escort vehicle shall display its sign so as to be readable by traffic overtaking from the rear and clearly legible at all times.

R912-9-10. Pilot/Escort Vehicle Lighting Requirements.

(1) Two methods of lighting are authorized by the Department. Requirements are as follows:

(a) Two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of 6 inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation, or

(b) An AAMVA approved amber rotating, oscillating, or flashing beacon/light bar mounted on top of the pilot/escort vehicle. This beacon/light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation.

(2) Incandescent, strobe or diode (LED) lights may be used provided they meet the above criteria.

R912-9-11. Pilot/Escort Vehicle Equipment Requirements.

(1) Pilot/Escort vehicles shall be equipped with the following safety items:

(a) Standard 18 inch or 24 inch red/white "STOP" and black/orange "SLOW" paddle signs. Construction zone flagging requires the 24-inch sign.

(b) Nine reflective triangles.

(c) Eight red-burning flares, glow sticks or equivalent illumination device approved by the Department.

(d) Three orange, 18 inch high cones.

(e) Flashlight~~[-with two or more D-cell batteries]~~. With a minimum 1 1/2" lense diameter, with extra batteries or charger (emergency type shake or crank -- will not be allowed).

(f) 9" minimum length red or orange cone for use when directing traffic.

~~(f)g~~ Orange hardhat and Class 2 safety vest for personnel involved in pilot/escort operations.

~~(g)h~~ A height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height.

~~(h)i~~ Fire extinguisher.

- (~~i~~) First aid kit must be clearly marked.
- (~~j~~) One spare "oversize load" sign, 7 feet by 18 inches.
- (~~k~~) Serviceable Spare tire, tire jack and lug wrench.
- (~~l~~) Handheld two way simplex radio or other compatible form of communication for operations outside pilot/escort vehicles.
- (2) Vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

R912-9-12. Police Escort Vehicle Equipment and Safety Requirements.

(1) Police escort vehicles shall be equipped with the following safety items:

(a) [~~Handheld radio or other form of communication for operation with pilot/escort vehicles;~~] All officers must have a CB radio to communicate with the pilot and transport vehicles.

(b) [~~If more than one police escort, only one will be required to have direct communication as designated under R912-9-12(a) with pilot/escort vehicle;~~] Officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form.

(c) [~~Before load movement, police escort(s) shall designate one point of contact for communication with pilot/escort driver and relay communications between other police escorts involved in move;~~] Officers shall verify that all pilot/escorts are in possession of current pilot/escort inspections, or they shall complete an inspection prior to load movement.

(d) Police vehicles must be clearly marked with emergency red and blue lighting visible 360 degrees;

(e) Officers shall be in uniform while conducting police escort moves.

R912-9-13. Insurance.

(1) Drivers shall carry proof of current insurance as authorized under Section 31-A-22-301.

(2) Pilot/escort vehicles shall have a minimum amount of \$750,000 liability. This is not a cumulative amount.

R912-9-16. Pre-Trip Planning and Coordination Requirements.

(1) A coordination and planning meeting shall be held prior to load movement. The driver(s) carrying or pulling the oversize load(s), the pilot/escort vehicle driver(s), law enforcement officers (if assigned), Department personnel (if involved), and public utilities company representatives (if involved) shall attend. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) The person designated as being in charge (usually a Department representative or a law enforcement officer).

(b) Authorized routing and permit conditions. Ensure that all documentation is distributed to all appropriate individuals involved in the move.

(c) Communication and signals coordination.

(d) Verification/measurement of load dimensions. Compare with permitted dimensions

(e) Copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

KEY: permitted vehicles, trucks, pilot/escort vehicles

Date of Enactment or Last Substantive Amendment: [~~November 4, 2005~~]2006

Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-406



Workforce Services, Unemployment Insurance

R994-508-102

Time Limits for Filing an Appeal from an Initial Department Determination

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 28610

FILED: 04/12/2006, 16:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the definition of "filed" for appeals.

SUMMARY OF THE RULE OR CHANGE: Our federal partners have started to calculate timely issuance of decisions differently. Because our current definition of "filed" uses the postmark date, instead of the received date, Utah is disadvantaged when determining time lapse between the date the appeal is filed and the date the appeal decision is issued. This change is necessary to meet new federal time lapse calculations. It also makes the definition of "filed" consistent throughout the program and with the courts.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the state budget. This is a federally-funded program and there are no costs to the state.

❖ LOCAL GOVERNMENTS: There will be no costs to local governments. This is a federally-funded program and there are not costs to local government.

❖ OTHER PERSONS: The Department has determined there will be no costs associated with this rule change. As the amendment simply changes the manner in which the time lapse is calculated, no additional requirements are placed upon persons filing an appeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department has determined there will be no costs associated with this rule change. As the amendment simply changes the manner in which the time lapse is calculated, no additional requirements are placed upon persons filing an appeal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses in Utah. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-508. Appeal Procedures.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) If the initial Department determination was delivered to the party, the time permitted for filing an appeal is ten calendar days. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. If the determination was sent through the U.S. Mail, an additional five calendar days will be added to the time allowed for an appeal from the initial Department determination.

Therefore, the amount of time permitted for filing an appeal from any initial Department determination sent through the U.S. Mail is fifteen calendar days unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) ~~[An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.]~~ The filing date is the date the appeal is received by the Department as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed the date of receipt is the date recorded on the fax. If an appeal is faxed or filed via the Internet, the appeal must be received by midnight on the due date to be considered timely.

KEY: unemployment compensation, appellate procedures

Date of Enactment or Last Substantive Amendment: ~~September 29, 2005~~ 2006

Notice of Continuation: June 11, 2003

Authorizing, and Implemented or Interpreted Law: 35A-4-508(2); 35A-4-508(5); 35A-4-508(6); 35A-4-406; 35A-4-103

◆ ————— ◆

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends May 31, 2006. At its option, the agency may hold public hearings.

From the end of the waiting period through August 29, 2006, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

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

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Real Estate **R162-2-2** Licensing Procedure

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 28520
Filed: 04/04/2006, 10:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to public comment received at a March 15, 2006, public hearing, the Commission and the Division have decided to change the proposed rule.

SUMMARY OF THE RULE OR CHANGE: The last phrase of proposed new Subsection R162-2-2(2.2.10) concerning renewal of license if convicted of certain misdemeanors is deleted. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 1, 2006, issue of the Utah State Bulletin, on page 4. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2-5.5(1)(a)(i) and 61-2-6(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The only impact on the State budget will be on the Division of Real Estate, which is the licensing agency for real estate agents and brokers. Deletion of misdemeanor convictions from proposed Subsection R162-2-2(2.2.10) is expected to increase the number of license renewal hearings before the Utah Real Estate Commission. However, since the increased number of renewal hearings cannot be calculated with any certainty because it is impossible to predict how many licensees will be convicted of crimes, the increased costs to the Division of Real Estate cannot be calculated.

❖ **LOCAL GOVERNMENTS:** None--Local governments do not act as licensed real estate agents nor do they license real estate agents. Therefore, local governments are not affected by the qualification requirements to obtain real estate licenses.

❖ **OTHER PERSONS:** The only persons who are affected by the qualification requirements to renew a real estate license that are related to criminal convictions are those licensees who have been convicted of crimes since obtaining their last licenses. The proposed rule is liberalized so that existing licensees are not automatically disqualified from renewal because of certain misdemeanor convictions. Licensees with misdemeanor convictions will be able to apply for renewal and will have a license renewal hearing at which they will have the opportunity to potentially prove fitness for renewal despite their convictions. While this will cause them to incur a renewal fee and possibly incur legal fees to obtain approval for a

renewed license that may not be granted to them, they will not automatically lose their investment in their profession because of certain misdemeanor convictions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only persons who are affected by the qualification requirements to renew a real estate license that are related to criminal convictions are those licensees who have been convicted of crimes since obtaining their last licenses. The proposed rule is liberalized so that existing licensees are not automatically disqualified from renewal because of certain misdemeanor convictions. Licensees with misdemeanor convictions will be able to apply for renewal and will have a license renewal hearing at which they will have the opportunity to potentially prove fitness for renewal despite their convictions. This will mean that they will pay a license renewal fee and may incur legal costs to pursue a license renewal for which they may not be approved.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing relaxes the standards for license renewals such that misdemeanor convictions involving fraud, misrepresentation, theft or dishonesty do not automatically disqualify an individual from renewal of his license. This relaxation of the standard could result in a cost-savings to the regulated profession, but no other fiscal impact to businesses is anticipated as a result of this filing. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/31/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2006

AUTHORIZED BY: Derek Miller, Director

**R162. Commerce, Real Estate.
R162-2. Exam and License Application Requirements.
R162-2-2. Licensing Procedure.**

2.2. Within 90 days after successful completion of the exam, the applicant shall return to the Division each of the following:

2.2.1. A report of the examination indicating that both portions of the exam have been passed within a six-month period of time.

2.2.2. The license application form required by the Division. The application form shall include the licensee's business and home address.

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.

2.2.3. The non-refundable fees which will include the appropriate license fee as authorized by Section 61-2-9(5) and the Recovery Fund fee as authorized by Section 61-2a-4.

2.2.4. Documentation indicating successful completion of the required education taken within the year prior to licensing. If the applicant has been previously licensed in another state which has substantially equivalent licensing requirements, he may apply to the Division for a waiver of all or part of the educational requirement.

2.2.4.1. Candidates for the license of sales agent will successfully complete 90 classroom hours of approved study in principles and practices of real estate. Experience will not satisfy the education requirement. Membership in the Utah State Bar will waive this requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application.

2.2.4.2. Candidates for the license of associate broker or principal broker will successfully complete 120 classroom hours of approved study consisting of at least 24 classroom hours in brokerage management, 24 classroom hours in advanced appraisal, 24 classroom hours in advanced finance, 24 hours in advanced property management and 24 classroom hours in advanced real estate law. Experience will not satisfy the education requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application.

2.2.5. The principal broker and associate broker applicant will submit the forms required by the Division documenting a minimum of three years licensed real estate experience and a total of at least 60 points accumulated within the five years prior to licensing. A minimum of two years (24 months) and at least 45 points will be accumulated from Tables I and/or II. The remaining 15 points may be accumulated from Tables I, II or III.

TABLE I - REAL ESTATE TRANSACTIONS

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:	
(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE II - PROPERTY MANAGEMENT

RESIDENTIAL	
(a) Each unit managed	.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

2.2.6. The Principal Broker may accumulate additional experience points by having participated in real estate related activities such as the following:

TABLE III - OPTIONAL

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

2.2.7. If the review of an application has been performed by the Division and the Division has denied the application based on insufficient experience, and if the applicant believes that the Experience Points Tables do not adequately reflect the amount of the applicant's experience, the applicant may petition the Real Estate Commission for reevaluation by making a written request within 30 days after the denial stating specific grounds upon which relief is requested. The Commission shall thereafter consider the request and issue a written decision.

2.2.8. An applicant previously licensed in another state will provide a written record of his license history from that state and documentation of disciplinary action, if any, against his license.

2.2.9. Qualifications of License Applicants. An applicant for a new license may not:

- (a) have been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any felony within five years preceding the application; or
- (b) have been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any misdemeanor involving fraud, misrepresentation, theft, or dishonesty within three years preceding the application.

2.2.10 Qualifications for Renewal. An applicant for license renewal, or for reinstatement of an expired license, may not have, during the term of the applicant's last license or during the period between license expiration and application to reinstate an expired license, been convicted of, or entered a plea in abeyance to, a felony[; and may not have been convicted of, or entered a plea in abeyance to, a misdemeanor involving fraud, misrepresentation, theft, or dishonesty].

2.2.11 Determining fitness for licensure. In determining whether an applicant who has not been disqualified by Subsections 2.2.9 or 2.2.10 meet the requirements of honesty, integrity, truthfulness, reputation and competency required for a new or a renewed license, the Commission and the Division will consider information they consider necessary to make this determination, including the following:

2.2.11.1. Whether an applicant has been denied a license to practice real estate, property management, or any regulated profession, business, or vocation, or whether any license has been suspended or revoked or subjected to any other disciplinary sanction by this or another jurisdiction;

2.2.11.2. Whether an applicant has been guilty of conduct or practices which would have been grounds for revocation or suspension of license under Utah law had the applicant then been licensed;

2.2.11.3. Whether a civil judgment has been entered against the applicant based on a real estate transaction, and whether the judgment has been fully satisfied;

2.2.11.4. Whether a civil judgment has been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied.

2.2.11.5. Whether an applicant has ever been convicted of, or entered a plea in abeyance to, any criminal offense, or whether any criminal charges against the applicant have ever been resolved by a diversion agreement or similar disposition;

2.2.11.6. Whether restitution ordered by a court in a criminal case has been fully satisfied;

2.2.11.7. Whether the parole or probation in a criminal case or the probation in a licensing action has been completed and fully served; and

2.2.11.8. Whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a license, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: 2006

Notice of Continuation: June 12, 2002

Authorizing, and Implemented or Interpreted Law: 61-2-5.5



End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Commerce, Occupational and Professional Licensing **R156-3a** Architect Licensing Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 28604
FILED: 04/10/2006, 09:40

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 3a, provides for the licensure of architects. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-3a-201(3) provides that the Architects 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 3a, with respect to architects.

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 the rule was last reviewed in June 2001, it has been amended two times. In May 2003, amendments were filed to reorganize the Architect Intern Development Program (IDP) Committee and to update the National Council for Architectural Registration Board (NCARB) Rules of Conduct to the current edition. No written comments were received by the Division with respect to the rule filing. The amendments were made effective on 06/03/2003. In March 2006, amendments were filed to clarify incidental practice and to update and add the fine schedule to the rule. Hunter Finch with the Governor's Office of Planning and Budget contacted the Division regarding concerns with Subsection R156-3a-501(6) and the existing wording possibly

exceeding the maximum fine allowed by statute. As a result of Mr. Finch's written comments, the Division filed a change in proposed rule to add wording which would alleviate Mr. Finch's concerns. Those amendments were made effective on 04/03/2006.

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 provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 3a, with respect to architects. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 04/10/2006



Commerce, Occupational and Professional Licensing **R156-60d** Substance Abuse Counselor Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 28605
FILED: 04/10/2006, 09:43

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 60, Part 5 provides for the licensure of substance abuse counselors. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-60-503(3) provides that the Licensed Substance Abuse Counselor 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 60, Part 5 with respect to substance abuse counselors.

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 the rule was last reviewed in June 2001, it has been amended once. In September 2001, amendments were filed to clarify the scope of practice and to correct the date of accreditation to correspond to when the education is received. The only written comment the Division received with respect to this rule was from Kent Bishop from the Governor's Office of Planning and Budget in October 2001. After reviewing the respective rule filing, Mr. Bishop suggested that acronyms that appeared in Subsections R156-60d-102(6) and (7) be specifically identified by full title. As a result of Mr. Bishop's comments, a nonsubstantive rule filing was filed on 10/18/2001 and the previously filed amendments to the rule were also made effective on 10/18/2001.

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 provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 5 with respect to substance abuse counselors. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:

Noel Taxin at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 04/10/2006

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Environmental Quality, Air Quality **R307-204** Emission Standards: Smoke Management

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 28602
FILED: 04/07/2006, 17:05

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source." Rule R307-204 protects the public health by controlling the release and impact of particulate pollution associated with prescribed and controlled fires in the State of Utah. Rule R307-204 also describes the operational procedures to follow when prescribed fires, wildland fires, or wildland fire use events occur. Rule R307-204 does not apply to agricultural activities specified in Section 19-2-114.

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: Rule R307-204 protects the public health by controlling the release and impact of particulate pollution associated with prescribed and controlled fires in the State of Utah. Under Rule R307-204, prescribed fires requiring a burn plan cannot be ignited and wildland fire use events cannot be managed before the executive secretary of the Air Quality Board (aqb) approves or conditionally approves the burn request. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 04/07/2006

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

HUMAN SERVICES
ADMINISTRATION
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Adam F Trupp at the above address, by phone at 801-538-4462, by FAX at 801-538-4016, or by Internet E-mail at AFTRUPP@utah.gov

AUTHORIZED BY: Lisa-Michele Church, Executive Director

EFFECTIVE: 04/04/2006

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Human Services, Administration
R495-862
Communicable Disease Control Act

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 28598
FILED: 04/04/2006, 14:13

**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 62A-1-111 allows the Department to adopt administrative rules that are not inconsistent with law. This rule was originally adopted in order meet an identified need to implement the provisions of the Act identified in the catchline. The current form of the rule is not inconsistent with the current law but the Department believes this rule should be modified or repealed and is in the process of evaluating the need for this rule. This notice of continuance is being filed in order to allow for time for further evaluation.

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 Department believes that there may not be a need to maintain this rule. However, Department administrators are in the process of conducting a department-wide evaluation and will suggest repeal or modification in the near future. This statement of continuation is being filed in order to provide additional time for the review and evaluation. This version of the rule is not inconsistent with the responsibilities or the Department under the Act referred to in the catchline.

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Human Services, Substance Abuse and
Mental Health
R523-21

Division of Substance Abuse and
Mental Health Rules

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 28599
FILED: 04/06/2006, 09:56

**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 62A-15-105 establishes the Division of Substance Abuse and Mental Health Board. The Board is given authority to establish necessary rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No public comment has received since the last time this rule was 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 sets in place a monitoring process for administering methadone, and allows for exceptions to persons who are taking methadone, but would not be able to receive their daily dose because of travel arrangements outside of their treatment area. These travel exceptions could include emergencies such as sickness or death of a loved one or vacations. In these exceptional situations, methadone can be prescribed for personal use and dispensed to the client for the length of time they are away from the substance abuse clinic. Without this process, the State of Utah would not be in compliance with federal law that

requires all persons who are prescribed methadone take it on a daily basis. Therefore, this rule should be continued.

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

HUMAN SERVICES
 SUBSTANCE ABUSE AND MENTAL HEALTH
 Room 209
 120 N 200 W
 SALT LAKE CITY UT 84103-1500, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@utah.gov

AUTHORIZED BY: Mark I Payne, Director

EFFECTIVE: 04/06/2006



**Money Management Council,
 Administration
 R628-10
 Rating Requirements to Be a Permitted
 Depository**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 28606
 FILED: 04/11/2006, 12:02

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 51-7-17(4) says that the public treasurer may invest in out of state financial

institutions that meet quality criteria set up by the Money Management Council, and Subsection 51-7-18(2)(b)(iv) says that the Money Management Council may write rules that govern deposits at permitted depositories.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments either way.

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 needed to establish a uniform standard for public treasurers to evaluate the financial condition of permitted depositories to determine if placing public funds in these depositories would expose public treasurers to undue risk. Deposits in permitted depositories are an allowed investment for public treasurers and the Money Management Act (Title 51, Chapter 7) requires that rules be written to oversee how a public treasurer may use this type of investment. Therefore, this rule should be continued.

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

MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 Room E315 EAST OFFICE BLDG
 STATE CAPITOL COMPLEX
 PO BOX 142315
 SALT LAKE CITY UT 84114-2315, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Ann Pedroza at the above address, by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Bruce B. Cohne, Chair

EFFECTIVE: 04/11/2006



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Agriculture and Food

Animal Industry

No. 28506 (AMD): R58-10. Meat and Poultry Inspection.
Published: March 1, 2006
Effective: April 3, 2006

Regulatory Services

No. 28503 (AMD): R70-101. Bedding, Upholstered Furniture and Quilted Clothing.
Published: March 1, 2006
Effective: April 3, 2006

Commerce

Occupational and Professional Licensing

No. 28429 (AMD): R156-3a. Architect Licensing Act Rules.
Published: January 15, 2006
Effective: April 3, 2006

No. 28429 (CPR): R156-3a. Architect Licensing Act Rules.
Published: March 1, 2006
Effective: April 3, 2006

No. 28444 (AMD): R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
Published: January 15, 2006
Effective: April 3, 2006

No. 28444 (CPR): R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
Published: March 1, 2006
Effective: April 3, 2006

Real Estate

No. 28499 (AMD): R162-202-10. Principal Lending Manager Experience Requirement.
Published: March 1, 2006
Effective: April 5, 2006

No. 28497 (AMD): R162-204. Residential Mortgage Record Keeping Requirements.
Published: March 1, 2006
Effective: April 5, 2006

No. 28498 (AMD): R162-205. Residential Mortgage Unprofessional Conduct.
Published: March 1, 2006
Effective: April 5, 2006

Education

Administration

No. 28522 (NEW): R277-716. Alternative Language Services for Utah Students.
Published: March 1, 2006
Effective: April 3, 2006

No. 28523 (AMD): R277-717. Mathematics, Engineering, Science Achievement (MESA).
Published: March 1, 2006
Effective: April 3, 2006

Rehabilitation

No. 28521 (NEW): R280-204. Utah State Office of Rehabilitation Employee Background Check Requirement.
Published: March 1, 2006
Effective: April 3, 2006

Environmental Quality

Air Quality

No. 28501 (AMD): R307-204. Emission Standards: Smoke Management.
Published: March 1, 2006
Effective: April 7, 2006

Health

Health Systems Improvement, Licensing

No. 28500 (AMD): R432-31. Transferable Physician Order for Life-Sustaining Treatment.
Published: March 1, 2006
Effective: April 13, 2006

Transportation

Operations, Traffic and Safety

No. 28524 (AMD): R920-50-1. Utah Ropeway Rules for Passenger Ropeways.
Published: March 1, 2006
Effective: April 4, 2006

NOTICES OF RULE EFFECTIVE DATES

Workforce Services

Employment Development

No. 28481 (AMD): R986-700-709. Employment Support
(ES) CC.

Published: February 15, 2006

Effective: April 12, 2006

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2006, including notices of effective date received through April 14, 2006, the effective dates of which are no later than May 1, 2006. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	28586	EMR	04/15/2006	2006-8/57
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	28384	AMD	01/25/2006	2005-24/2
<u>Fleet Operations</u>					
R27-1	Definitions	28474	5YR	01/30/2006	2006-4/33
R27-1	Definitions (5YR EXTENSION)	28279	NSC	01/30/2006	Not Printed
R27-1-2	Definitions	28368	NSC	01/01/2006	Not Printed
R27-2	Fleet Operations Adjudicative Proceedings	28475	5YR	01/30/2006	2006-4/33
R27-3	Vehicle Use Standards	28477	5YR	01/30/2006	2006-4/34
R27-3	Vehicle Use Standards (5YR EXTENSION)	28280	NSC	01/30/2006	Not Printed
R27-7	Safety and Loss Prevention of State Vehicles	28469	5YR	01/20/2006	2006-4/34

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Fleet Operations, Surplus Property</u>					
R28-2	Surplus Firearms	28496	5YR	02/07/2006	2006-5/47
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	28436	NSC	02/22/2006	Not Printed
R33-1-1	Definitions	28445	AMD	02/21/2006	2006-2/3
R33-2-101	Delegation of Authority of the Chief Procurement Officer	28437	NSC	02/22/2006	Not Printed
R33-3	Source Selection and Contract Formation	28447	AMD	02/21/2006	2006-2/5
R33-4	Specifications	28438	NSC	02/22/2006	Not Printed
R33-5	Construction and Architect-Engineer Selection	28448	NSC	02/22/2006	Not Printed
R33-7	Cost Principles	28439	NSC	02/22/2006	Not Printed
R33-8	Property Management	28440	NSC	02/22/2006	Not Printed
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	28462	AMD	03/14/2006	2006-3/3
<u>Risk Management</u>					
R37-1	Risk Management General Rules	28413	AMD	03/31/2006	2006-1/4
Agriculture and Food					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	28552	5YR	03/16/2006	2006-8/69
R51-4	ADA Complaint Procedure	28553	5YR	03/16/2006	2006-8/69
<u>Animal Industry</u>					
R58-10	Meat and Poultry Inspection	28506	AMD	04/03/2006	2006-5/2
<u>Marketing and Development</u>					
R65-8	Management of the Junior Livestock Show Appropriation	28558	5YR	03/16/2006	2006-8/70
<u>Plant Industry</u>					
R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	28504	5YR	02/10/2006	2006-5/47
R68-7	Utah Pesticide Control Act	28554	5YR	03/16/2006	2006-8/70
R68-8	Utah Seed Law	28452	5YR	01/09/2006	2006-3/38
R68-18	Quarantine Pertaining to Karnal Bunt	28505	5YR	02/10/2006	2006-5/48
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	28503	AMD	04/03/2006	2006-5/3
R70-330	Raw Milk for Retail	28555	5YR	03/16/2006	2006-8/71
R70-370	Butter	28556	5YR	03/16/2006	2006-8/71
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	28557	5YR	03/16/2006	2006-8/72
R70-410	Grading and Inspection of Shell Eggs With Standard Grade and Weight Classes	28471	5YR	01/24/2006	2006-4/35
R70-410-1	Authority	28485	AMD	03/20/2006	2006-4/4
Alcoholic Beverage Control					
<u>Administration</u>					
R81-10A-7	Draft Beer Sales/Minors on Premises	28431	NSC	01/01/2006	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-3a	Architect Licensing Act Rules	28429	AMD	04/03/2006	2006-2/15
R156-3a	Architect Licensing Act Rules	28429	CPR	04/03/2006	2006-5/44
R156-3a	Architect Licensing Act Rules	28604	5YR	04/10/2006	2006-9/39
R156-17b	Pharmacy Practice Act Rules	28530	AMD	04/17/2006	2006-6/2
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	28444	CPR	04/03/2006	2006-5/45
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	28444	AMD	04/03/2006	2006-2/17
R156-31b	Nurse Practice Act Rules	28365	AMD	01/23/2006	2005-24/3
R156-37	Utah Controlled Substances Act Rules	28310	AMD	02/16/2006	2005-22/8
R156-37	Utah Controlled Substances Act Rules	28310	CPR	02/16/2006	2006-2/35
R156-44a	Nurse Midwife Practice Act Rules	28352	AMD	01/05/2006	2005-23/4
R156-46b	Division Utah Administrative Procedures Act Rules	28673	5YR	04/25/2006	Not Printed
R156-47b	Massage Therapy Practice Act Rules	28478	5YR	01/31/2006	2006-4/35
R156-50	Private Probation Provider Licensing Act Rules	28550	5YR	03/13/2006	2006-7/33
R156-56	Utah Uniform Building Standard Act Rules	28286	AMD	01/01/2006	2005-21/6
R156-56-707	Statewide Amendments to the IPC	28285	AMD	01/01/2006	2005-21/25
R156-56-711	Statewide Amendments to the IRC	28427	NSC	02/23/2006	Not Printed
R156-60d	Substance Abuse Counselor Act Rules	28605	5YR	04/10/2006	2006-9/40
R156-63-503	Administrative Penalties	28345	AMD	01/10/2006	2005-23/5
R156-74	Certified Shorthand Reporters Licensing Act Rules	28428	AMD	02/16/2006	2006-2/24
<u>Real Estate</u>					
R162-10-1	Formal Adjudicative Proceedings	28494	AMD	04/19/2006	2006-5/7
R162-202-10	Principal Lending Manager Experience Requirement	28499	AMD	04/05/2006	2006-5/7
R162-203	Status Changes	28450	AMD	03/09/2006	2006-3/4
R162-204	Residential Mortgage Record Keeping Requirements	28497	AMD	04/05/2006	2006-5/8
R162-205	Residential Mortgage Unprofessional Conduct	28498	AMD	04/05/2006	2006-5/9
R162-207-3	Renewal Process	28451	AMD	03/09/2006	2006-3/5
R162-209	Administrative Proceedings	28476	5YR	01/30/2006	2006-4/36
Community and Culture					
<u>Housing and Community Development</u>					
R199-11	Community Development Block Grants (CDBG)	28647	5YR	04/19/2006	Not Printed
<u>Indian Affairs</u>					
R230-1	Native American Grave Protection and Repatriation	28479	5YR	01/31/2006	2006-4/37
<u>Olene Walker Housing Trust Fund</u>					
R235-1	Olene Walker Housing Loan Fund (OWHLF)	28492	NSC	03/01/2006	Not Printed
R235-1	Olene Walker Housing Loan Fund (OWHLF)	28402	NEW	03/01/2006	2006-1/9
Community and Economic Development					
<u>Administration</u>					
R182-1	Government Records Access and Management Act Rules	28442	NSC	01/01/2006	Not Printed

RULES INDEX

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<u>Community Development</u>					
R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	28347	NSC	01/01/2006	Not Printed
R199-9	Policy Concerning Enforceability and Taxability of Bonds Purchased	28348	NSC	01/01/2006	Not Printed
R199-10	Procedures in Case of Inability to Formulate Contract for Alleviation of Impact	28349	NSC	01/01/2006	Not Printed
R199-11	Community Development Block Grants (CDBG)	28350	NSC	01/01/2006	Not Printed
<u>Community Development, Community Services</u>					
R202-100	Community Services Block Grant Rules	28353	NSC	01/01/2006	Not Printed
R202-201	Energy Assistance: General Provisions	28359	NSC	01/01/2006	Not Printed
R202-202	Energy Assistance Programs Standards	28385	NSC	01/01/2006	Not Printed
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R277-602	Special Needs Scholarships - Funding and Procedures	28446	AMD	02/15/2006	2006-2/25
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R590-85	Individual Accident and Health Insurance and Individual and Group Medicare Supplement Rates	28117	CPR	01/31/2006	2005-20/61
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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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