

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Editor

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

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Division of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Commerce Occupational and Professional Licensing

### Public Notice of 2007 Board and Committee Meeting Schedule

NOTE: Meetings are subject to change - contact the Division at (801) 530-6628 to confirm meetings. Most meetings are held in the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

#### January

01/02/2006, Unified Code Analysis Council, 9:00 a.m.; 01/03/2006, Plumbers Licensing Board, 9:00 a.m.; 01/03/2006, Utah Board of Accountancy, 1:00 p.m.; 01/04/2006, Alarm System Security and Licensing Board, 9:00 a.m.; 01/04/2006, Social Worker Licensing Board, 9:00 a.m.; 01/04/2006, UBCC Plumbing Advisory Committee, 9:00 a.m.; 01/04/2006, UBCC Structural Advisory Committee, 1:00 p.m.; 01/09/2006, UBCC Mechanical Advisory Committee, 9:00 a.m.; 01/10/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 01/10/2006, Physicians Licensing Board, 8:30 a.m.; 01/10/2006, Hearing Instrument Specialist Licensing Board, 9:00 a.m.; 01/10/2006, UBCC Architectural Advisory Committee, 9:00 a.m.; 01/11/2006, Chiropractic Physicians Licensing Board, 9:00 a.m.; 01/12/2006, Licensed Direct-Entry Midwife Board, 1:00 p.m.; 01/16/2006, Board of Massage Therapy, 9:00 a.m.; 01/16/2006, Professional Counselor Licensing Board, 9:00 a.m.; 01/16/2006, UBCC Education Advisory Committee, 1:00 p.m.; 01/17/2006, Osteopathic Physicians Licensing Board, 9:00 a.m.; 01/17/2006, Professional Engineer and Professional Land Surveyor Board, 9:00 a.m.; 01/18/2006, Electricians Licensing Board, 9:00 a.m.; 01/18/2006, Contract Security Education Peer Committee, 9:00 a.m.; 01/19/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 01/19/2006, Uniform Building Code Commission, 9:00 a.m.; 01/22/2006, Optometrist Licensing Board, 9:00 a.m.; 01/23/2006, State Board of Pharmacy, 9:00 a.m.; 01/24/2006, Certified Nurse Midwife Board, 9:00 a.m.; 01/26/2006, Board of Nursing, 7:30 a.m.; 01/26/2006, Radiology Technologists Licensing Board, 9:00 a.m.; 01/30/2006, Psychology Board, 9:00 a.m.; 01/31/2006, Construction Services Commission, 9:00 a.m.

#### February

02/01/2006, Social Worker Licensing Board, 9:00 a.m.; 02/01/2006, UBCC Plumbing Advisory Committee, 9:00 a.m.; 02/01/2006, UBCC Structural Advisory Committee, 1:00 p.m.; 02/02/2006, Architect Licensing Board, 9:00 a.m.; 02/06/2006, Unified Code Analysis Council, 9:00 a.m.; 02/07/2006, Plumbers Licensing Board, 9:00 a.m.; 02/07/2006, Physical Therapy Licensing Board, 9:00 a.m.; 02/07/2006, Utah Board of Accountancy, 1:00 p.m.; 02/08/2006, Security Services Licensing Board, 9:00 a.m.; 02/08/2006, Professional Geologist Licensing Board, 9:00 a.m.; 02/13/2006, UBCC Mechanical Advisory Committee, 9:00 a.m.; 02/14/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 02/14/2006, Physicians Licensing Board, 8:30 a.m.; 02/14/2006, UBCC Architectural Advisory Committee, 9:00 a.m.; 02/14/2006, CPA Education Committee, 1:00 p.m.; 02/15/2006, Electricians Licensing Board, 9:00 a.m.; 02/15/2006, Funeral Service Board, 9:00 a.m.; 02/15/2006, UBCC Electrical Advisory Committee, 9:00 a.m.; 02/16/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 02/16/2006, Uniform Building Code Commission, 9:00 a.m.; 02/20/2006, Podiatric Physician Board, 8:15 a.m.; 02/20/2006, UBCC Education Advisory Committee, 1:00 p.m.; 02/21/2006, Licensed Substance Abuse Counselor Board, 9:00 a.m.; 02/22/2006, Occupational Therapy Board, 9:00 a.m.; 02/22/2006, Controlled Substance Precursor Board, 2:00 p.m.; 02/23/2006, Board of Nursing, 7:30 a.m.; 02/27/2006, State Board of Pharmacy, 9:00 a.m.; 02/27/2006, CPA Peer Committee, 1:00 p.m.; 02/28/2006, Construction Services Commission, 9:00 a.m.

#### March

03/01/2006, Social Worker Licensing Board, 9:00 a.m.; 03/01/2006, UBCC Plumbing Advisory Committee, 9:00 a.m.; 03/01/2006, Veterinary Board, 9:00 a.m.; 03/01/2006, UBCC Structural Advisory Committee, 1:00 p.m.; 03/05/2006, Cosmetology/Barber, Esthetics, Esthetician and Nail Technology Licensing Board, 9:00 a.m.; 03/06/2006, Unified Code Analysis Council, 9:00 a.m.; 03/07/2006, Plumbers Licensing Board, 9:00 a.m.; 03/07/2006, Athletic Trainers Licensing Board, 9:00 a.m.; 03/07/2006, Utah Board of Accountancy, 1:00 p.m.; 03/08/2006, Genetic Counselor Licensing Board, 8:15 a.m.; 03/08/2006, Alarm System Security and Licensing Board, 9:00 a.m.; 03/09/2006, Marriage and Family Therapist Licensing Board, 9:00 a.m.; 03/13/2006, Massage Therapy Education Peer Committee, 9:00 a.m.; 03/14/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 03/14/2006, Physicians Licensing Board, 8:30 a.m.; 03/14/2006, Speech-Language Pathology and Audiology Licensing Board, 9:00 a.m.; 03/15/2006, Physician Assistant Licensing Board, 8:15 a.m.; 03/15/2006, Electricians Licensing Board, 9:00 a.m.; 03/15/2006, UBCC Electrical Advisory Committee, 9:00 a.m.; 03/16/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 03/16/2006, Uniform Building Code Commission, 9:00 a.m.; 03/20/2006, Board of Massage Therapy, 9:00 a.m.; 03/20/2006, Professional Counselor Licensing Board, 9:00 a.m.; 03/20/2006, Building Inspector Licensing Board, 10:00 a.m.; 03/20/2006, UBCC Education Advisory Committee, 1:00 p.m.; 03/21/2006, Professional Engineer and Professional Land Surveyor Board, 9:00 a.m.; 03/21/2006, Deception Detection Examiners Board, 1:00 p.m.; 03/27/2006, State Board of Pharmacy, 9:00 a.m.; 03/28/2006, Construction Services Commission, 9:00 a.m.; 03/30/2006, Board of Nursing, 7:30 a.m.

## SPECIAL NOTICES

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### April

04/04/2006, Plumbers Licensing Board, 9:00 a.m.; 04/04/2006, Utah Board of Accountancy, 1:00 p.m.; 04/06/2006, Architect Licensing Board, 9:00 a.m.; 04/10/2006, UBCC Education Advisory Committee, 1:00 p.m.; 04/11/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 04/11/2006, Physicians Licensing Board, 8:30 a.m.; 04/11/2006, Hearing Instrument Specialist Licensing Board, 9:00 a.m.; 04/12/2006, Social Worker Licensing Board, 9:00 a.m.; 04/12/2006, Security Services Licensing Board, 9:00 a.m.; 04/12/2006, Chiropractic Physicians Licensing Board, 9:00 a.m.; 04/13/2006, Licensed Direct-Entry Midwife Board, 1:00 p.m.; 04/16/2006, Optometrist Licensing Board, 9:00 a.m.; 04/18/2006, Osteopathic Physicians Licensing Board, 9:00 a.m.; 04/19/2006, Electricians Licensing Board, 9:00 a.m.; 04/19/2006, Contract Security Education Peer Committee, 9:00 a.m.; 04/20/2006, Board of Nursing, 7:30 a.m.; 04/20/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 04/24/2006, State Board of Pharmacy, 9:00 a.m.; 04/24/2006, Psychology Board, 9:00 a.m.; 04/24/2006, Health Facility Administrators Licensing Board, 9:00 a.m.; 04/25/2006, Construction Services Commission, 9:00 a.m.; 04/26/2006, Acupuncture Board, 9:00 a.m.; 04/26/2006, Landscape Architect Licensing Board, 1:00 p.m.; 04/26/2006, Certified Court Reporter Board, 2:00 p.m.; 04/27/2006, Radiology Technologists Licensing Board, 9:00 a.m.

### May

05/02/2006, Plumbers Licensing Board, 9:00 a.m.; 05/02/2006, Licensed Substance Abuse Counselor Board, 9:00 a.m.; 05/02/2006, Utah Board of Accountancy, 1:00 p.m.; 05/03/2006, Alarm System Security and Licensing Board, 9:00 a.m.; 05/09/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 05/09/2006, Physicians Licensing Board, 8:30 a.m.; 05/09/2006, Alternative Dispute Resolution Providers Certification Board, 9:00 a.m.; 05/09/2006, CPA Education Committee, 1:00 p.m.; 05/10/2006, Social Worker Licensing Board, 9:00 a.m.; 05/10/2006, Naturopathic Physicians Licensing Board, 9:00 a.m.; 05/15/2006, Podiatric Physician Board, 8:15 a.m.; 05/15/2006, Uniform Building Code Commission, 9:00 a.m.; 05/15/2006, Board of Massage Therapy, 9:00 a.m.; 05/15/2006, Dietitian Board, 9:00 a.m.; 05/15/2006, UBCC Education Advisory Committee, 1:00 p.m.; 05/16/2006, Professional Engineer and Professional Land Surveyor Board, 9:00 a.m.; 05/17/2006, Electricians Licensing Board, 9:00 a.m.; 05/18/2006, Board of Nursing, 7:30 a.m.; 05/18/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 05/22/2006, State Board of Pharmacy, 9:00 a.m.; 05/22/2006, Professional Counselor Licensing Board, 9:00 a.m.; 05/30/2006, Construction Services Commission, 9:00 a.m.; 05/31/2006, Athlete Agent Licensing Board, 9:00 a.m.; 05/31/2006, Funeral Service Board, 9:00 a.m.

### June

06/01/2006, Architect Licensing Board, 9:00 a.m.; 06/01/2006, Marriage and Family Therapist Licensing Board, 9:00 a.m.; 06/04/2006, Cosmetology/Barber, Esthetics, Esthetician and Nail Technology Licensing Board, 9:00 a.m.; 06/05/2006, Unified Code Analysis Council, 9:00 a.m.; 06/06/2006, Plumbers Licensing Board, 9:00 a.m.; 06/06/2006, Utah Board of Accountancy, 1:00 p.m.; 06/07/2006, Professional Geologist Licensing Board, 9:00 a.m.; 06/07/2006, Social Worker Licensing Board, 9:00 a.m.; 06/07/2006, Veterinary Board, 9:00 a.m.; 06/07/2006, UBCC Structural Advisory Committee, 1:00 p.m.; 06/12/2006, Massage Therapy Education Peer Committee, 9:00 a.m.; 06/12/2006, UBCC Mechanical Advisory Committee, 9:00 a.m.; 06/13/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 06/13/2006, Physicians Licensing Board, 8:30 a.m.; 06/14/2006, Security Services Licensing Board, 9:00 a.m.; 06/15/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 06/15/2006, Uniform Building Code Commission, 9:00 a.m.; 06/19/2006, Building Inspector Licensing Board, 10:00 a.m.; 06/19/2006, UBCC Education Advisory Committee, 1:00 p.m.; 06/21/2006, Physician Assistant Licensing Board, 8:15 a.m.; 06/21/2006, Electricians Licensing Board, 9:00 a.m.; 06/21/2006, Private Probation Provider Licensing Board, 9:00 a.m.; 06/22/2006, Board of Nursing, 7:30 a.m.; 06/26/2006, State Board of Pharmacy, 9:00 a.m.; 06/27/2006, Construction Services Commission, 9:00 a.m.; 06/27/2006, Athletic Trainers Licensing Board, 9:00 a.m.

### July

07/03/2006, Unified Code Analysis Council, 9:00 a.m.; 07/03/2006, Utah Board of Accountancy, 1:00 p.m.; 07/05/2006, Alarm System Security and Licensing Board, 9:00 a.m.; 07/05/2006, UBCC Plumbing Advisory Committee, 9:00 a.m.; 07/05/2006, UBCC Structural Advisory Committee, 1:00 p.m.; 07/10/2006, UBCC Mechanical Advisory Committee, 9:00 a.m.; 07/11/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 07/11/2006, Physicians Licensing Board, 8:30 a.m.; 07/11/2006, Hearing Instrument Specialist Licensing Board, 9:00 a.m.; 07/11/2006, UBCC Architectural Advisory Committee, 9:00 a.m.; 07/12/2006, Chiropractic Physicians Licensing Board, 9:00 a.m.; 07/12/2006, Social Worker Licensing Board, 9:00 a.m.; 07/13/2006, Licensed Direct-Entry Midwife Board, 1:00 p.m.; 07/17/2006, Board of Massage Therapy, 9:00 a.m.; 07/17/2006, Professional Counselor Licensing Board, 9:00 a.m.; 07/17/2006, UBCC Education Advisory Committee, 1:00 p.m.; 07/18/2006, Osteopathic Physicians Licensing Board, 9:00 a.m.; 07/18/2006, Professional Engineer and Professional Land Surveyor Board, 9:00 a.m.; 07/19/2006, Electricians Licensing Board, 9:00 a.m.; 07/19/2006, Contract Security Education Peer Committee, 9:00 a.m.; 07/19/2006, UBCC Electrical Advisory Committee, 9:00 a.m.; 07/20/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 07/20/2006, Uniform Building Code Commission, 9:00 a.m.; 07/25/2006, Construction Services Commission, 9:00 a.m.; 07/25/2006, Occupational Therapy Board, 9:00 a.m.; 07/27/2006, Board of Nursing, 7:30 a.m.; 07/27/2006, Radiology Technologists Licensing Board, 9:00 a.m.; 07/30/2006, Optometrist Licensing Board, 9:00 a.m.; 07/31/2006, Psychology Board, 9:00 a.m.; 07/31/2006, State Board of Pharmacy, 9:00 a.m.



August

08/01/2006, Plumbers Licensing Board, 9:00 a.m.; 08/01/2006, Environmental Health Scientist Board, 9:00 a.m.; 08/01/2006, Utah Board of Accountancy, 1:00 p.m.; 08/02/2006, Social Worker Licensing Board, 9:00 a.m.; 08/02/2006, UBCC Plumbing Advisory Committee, 9:00 a.m.; 08/02/2006, UBCC Structural Advisory Committee, 1:00 p.m.; 08/03/2006, Architect Licensing Board, 9:00 a.m.; 08/07/2006, Unified Code Analysis Council, 9:00 a.m.; 08/08/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 08/08/2006, Physicians Licensing Board, 8:30 a.m.; 08/08/2006, Licensed Substance Abuse Counselor Board, 9:00 a.m.; 08/08/2006, UBCC Architectural Advisory Committee, 9:00 a.m.; 08/08/2006, CPA Education Committee, 1:00 p.m.; 08/09/2006, Security Services Licensing Board, 9:00 a.m.; 08/14/2006, UBCC Mechanical Advisory Committee, 9:00 a.m.; 08/15/2006, Deception Detection Examiners Board, 1:00 p.m.; 08/16/2006, Electricians Licensing Board, 9:00 a.m.; 08/16/2006, Funeral Service Board, 9:00 a.m.; 08/16/2006, UBCC Electrical Advisory Committee, 9:00 a.m.; 08/17/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 08/17/2006, Uniform Building Code Commission, 9:00 a.m.; 08/21/2006, Podiatric Physician Board, 8:15 a.m.; 08/21/2006, Recreational Therapy Board, 9:00 a.m.; 08/21/2006, UBCC Education Advisory Committee, 1:00 p.m.; 08/23/2006, Acupuncture Board, 9:00 a.m.; 08/24/2006, Board of Nursing, 7:30 a.m.; 08/28/2006, State Board of Pharmacy, 9:00 a.m.; 08/28/2006, CPA Peer Committee, 1:00 p.m.; 08/29/2006, Construction Services Commission, 9:00 a.m.; 08/30/2006, Controlled Substance Precursor Board, 2:00 p.m.

September

09/04/2006, Respiratory Care Licensing Board, 9:00 a.m.; 09/05/2006, Plumbers Licensing Board, 9:00 a.m.; 09/05/2006, Utah Board of Accountancy, 1:00 p.m.; 09/06/2006, Alarm System Security and Licensing Board, 9:00 a.m.; 09/06/2006, Social Worker Licensing Board, 9:00 a.m.; 09/06/2006, Veterinary Board, 9:00 a.m.; 09/10/2006, Cosmetology/Barber, Esthetics, Esthetician and Nail Technology Licensing Board, 9:00 a.m.; 09/11/2006, Massage Therapy Education Peer Committee, 9:00 a.m.; 09/12/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 09/12/2006, Physicians Licensing Board, 8:30 a.m.; 09/12/2006, Speech-Language Pathology and Audiology Licensing Board, 9:00 a.m.; 09/12/2006, Alternative Dispute Resolution Providers Certification Board, 9:00 a.m.; 09/14/2006, Marriage and Family Therapist Licensing Board, 9:00 a.m.; 09/18/2006, Board of Massage Therapy, 9:00 a.m.; 09/18/2006, Professional Counselor Licensing Board, 9:00 a.m.; 09/18/2006, Building Inspector Licensing Board, 10:00 a.m.; 09/18/2006, UBCC Education Advisory Committee, 1:00 p.m.; 09/19/2006, Professional Engineer and Professional Land Surveyor Board, 9:00 a.m.; 09/20/2006, Physician Assistant Licensing Board, 8:15 a.m.; 09/20/2006, Electricians Licensing Board, 9:00 a.m.; 09/20/2006, Landscape Architect Licensing Board, 1:00 p.m.; 09/21/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 09/21/2006, Uniform Building Code Commission, 9:00 a.m.; 09/25/2006, State Board of Pharmacy, 9:00 a.m.; 09/26/2006, Construction Services Commission, 9:00 a.m.; 09/28/2006, Board of Nursing, 7:30 a.m.

October

10/02/2006, Psychology Board, 9:00 a.m.; 10/03/2006, Plumbers Licensing Board, 9:00 a.m.; 10/03/2006, Utah Board of Accountancy, 1:00 p.m.; 10/04/2006, Social Worker Licensing Board, 9:00 a.m.; 10/05/2006, Architect Licensing Board, 9:00 a.m.; 10/10/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 10/10/2006, Physicians Licensing Board, 8:30 a.m.; 10/10/2006, Hearing Instrument Specialist Licensing Board, 9:00 a.m.; 10/11/2006, Security Services Licensing Board, 9:00 a.m.; 10/11/2006, Professional Geologist Licensing Board, 9:00 a.m.; 10/11/2006, Chiropractic Physicians Licensing Board, 9:00 a.m.; 10/12/2006, Licensed Direct-Entry Midwife Board, 1:00 p.m.; 10/15/2006, Optometrist Licensing Board, 9:00 a.m.; 10/16/2006, UBCC Education Advisory Committee, 1:00 p.m.; 10/18/2006, Osteopathic Physicians Licensing Board, 9:00 a.m.; 10/18/2006, Contract Security Education Peer Committee, 9:00 a.m.; 10/18/2006, Electricians Licensing Board, 9:00 a.m.; 10/19/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 10/23/2006, Health Facility Administrators Licensing Board, 9:00 a.m.; 10/23/2006, State Board of Pharmacy, 9:00 a.m.; 10/25/2006, Certified Court Reporter Board, 2:00 p.m.; 10/26/2006, Board of Nursing, 7:30 a.m.; 10/26/2006, Radiology Technologists Licensing Board, 9:00 a.m.; 10/31/2006, Construction Services Commission, 9:00 a.m.

November

11/01/2006, Social Worker Licensing Board, 9:00 a.m.; 11/06/2006, Professional Counselor Licensing Board, 9:00 a.m.; 11/07/2006, Plumbers Licensing Board, 9:00 a.m.; 11/07/2006, Licensed Substance Abuse Counselor Board, 9:00 a.m.; 11/07/2006, Utah Board of Accountancy, 1:00 p.m.; 11/08/2006, Alarm System Security and Licensing Board, 9:00 a.m.; 11/08/2006, Naturopathic Physicians Licensing Board, 9:00 a.m.; 11/13/2006, UBCC Education Advisory Committee, 1:00 p.m.; 11/14/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 11/14/2006, Physicians Licensing Board, 8:30 a.m.; 11/14/2006, CPA Education Committee, 1:00 p.m.; 11/15/2006, Electricians Licensing Board, 9:00 a.m.; 11/15/2006, Funeral Service Board, 9:00 a.m.; 11/15/2006, Uniform Building Code Commission, 9:00 a.m.; 11/16/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 11/16/2006, Board of Nursing, 7:30 a.m.; 11/19/2006, Professional Engineer and Professional Land Surveyor Board, 9:00 a.m.; 11/20/2006, Podiatric Physician Board, 8:15 a.m.; 11/20/2006, Board of Massage Therapy, 9:00 a.m.; 11/27/2006, State Board of Pharmacy, 9:00 a.m.; 11/27/2006, Occupational Therapy Board, 9:00 a.m.; 11/28/2006, Construction Services Commission, 9:00 a.m.; 11/29/2006, Athlete Agent Licensing Board, 9:00 a.m.

December

12/03/2006, Cosmetology/Barber, Esthetics, Esthetician and Nail Technology Licensing Board, 9:00 a.m.; 12/05/2006, Plumbers Licensing Board, 9:00 a.m.; 12/05/2006, Utah Board of Accountancy, 1:00 p.m.; 12/06/2006, Social Worker Licensing Board, 9:00 a.m.; 12/07/2006, Architect Licensing Board, 9:00 a.m.; 12/11/2006, Massage Therapy Education Peer Committee, 9:00 a.m.; 12/12/2006, Residence Lien Recovery Fund Board, 8:15 a.m.; 12/12/2006, Physicians Licensing Board, 8:30 a.m.; 12/13/2006, Security Services Licensing Board, 9:00 a.m.; 12/13/2006, Acupuncture Board, 9:00 a.m.; 12/14/2006, Board of Nursing, 7:30 a.m.; 12/14/2006, Marriage and Family Therapist Licensing Board, 9:00 a.m.; 12/18/2006, State Board of Pharmacy, 9:00 a.m.; 12/18/2006, Building Inspector Licensing Board, 10:00 a.m.; 12/18/2006, UBCC Education Advisory Committee, 1:00 p.m.; 12/20/2006, Physician Assistant Licensing Board, 8:15 a.m.; 12/20/2006, Electricians Licensing Board, 9:00 a.m.; 12/20/2006, Private Probation Provider Licensing Board, 9:00 a.m.; 12/21/2006, Dentist and Dental Hygienist Board, 8:15 a.m.; 12/21/2006, Uniform Building Code Commission, 9:00 a.m.; 12/26/2006, Construction Services Commission, 9:00 a.m.

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**Governor's Executive Order 2006-0010: Integrating Dispute Resolution into State Government**

**EXECUTIVE ORDER**

Integrating Dispute Resolution into State Government

**WHEREAS**, this administration is committed to ensuring that state agencies utilize the most efficient and effective means of resolving disputes in fulfilling the mission of the state government;

**WHEREAS**, to be effective in addressing the wide array of issues that face the state, agencies need to employ a variety of strategies and problem-solving tools;

**WHEREAS**, alternative dispute resolution ("ADR") methods offer an opportunity to prevent and resolve disputes in a collaborative manner;

**WHEREAS**, the appropriate use of ADR methods by state agencies and the state's partners will improve public services by providing for broad input on, and creative resolutions to, complex public policy disputes;

**WHEREAS**, in S.J.R. 3 of the 2005 General Session, the Utah Legislature urged state government to use alternative dispute resolution as the preferred option of preventing and resolving conflicts, reducing litigation costs, and resolving disputes; and

**WHEREAS**, the Government Dispute Resolution Act, Title 63, Chapter 46c of the Utah Code, authorizes public agencies in Utah to utilize ADR procedures and to appoint ADR coordinators to assist them for that purpose:

**NOW, THEREFORE**, I, Jon M. Huntsman, Jr., Governor of the State of Utah, by virtue of the authority vested in me by the laws and constitution of the state, hereby order the following:

1. The chief executive of each department and the director of each executive branch agency that functions independently of a department shall:
  - a. in the case of agencies of more than 50 FTE's, designate an agency ADR Coordinator who shall:
    - i. participate as a member of the state ADR Council to review the agency's processes for managing conflicts and controversies;
    - ii. participate in training or certification as determined by the ADR Council; and
    - iii. coordinate efforts within the agency to design, evaluate and implement ADR systems;
  - b. for agencies of 50 or fewer FTE's, arrange for a representative to participate on the ADR Council on the agency's behalf;
  - c. in any case, deploy and support ADR systems within the agency by providing staff, budget, and opportunity consistent with law, agency circumstances, and available resources to promote alternative dispute prevention and resolution methods; and
  - d. for all agencies, submit annual reports to the ADR Council on their progress in the use of ADR and other collaborative problem solving approaches.

2. An ADR Council, to be housed in the Department of Community and Culture, is established consisting of representatives of all department level executive branch agencies and other participating agencies. The Office of the Governor shall designate the council chair. The chair shall establish the council's agenda and meeting schedule. As appropriate, the council shall:

- a. evaluate dispute resolution systems in state government;
- b. determine how ADR systems, such as facilitated discussions, mediation and collaboration, can be deployed to improve the efficient prevention and/or resolution of disputes;
- c. make recommendations for deploying ADR systems in state agencies;
- d. identify and address barriers to the use of ADR systems in state agencies;
- e. integrate dispute prevention and resolution systems into state government by providing consultation, technical assistance and guidance to agency ADR coordinators as they develop ADR plans and programs;
- f. work with agencies, the Office of the Governor, the Attorney General, and the ADR community in Utah to identify opportunities and to implement ADR systems in state government;
- g. develop model policies and procedures to govern ADR systems in state agencies, and coordinate or assist with the delivery of ADR programs as needed, including identifying ADR resources and ensuring access to neutrals and training opportunities;
- h. develop certification standards, training curricula and standards, and training systems;
- i. track relevant data for evaluating ADR systems and make recommendations to improve integration of ADR systems in state government;
- j. prepare reports for the Governor of ADR activities as needed or requested, including:
  - i. agency utilization of ADR;
  - ii. evaluation of the effectiveness of ADR processes in the various agencies;
  - iii. ADR training delivered to agency employees;
  - iv. the implementation of any new ADR programs and projects;
  - v. the status of activities proposed or planned by the ADR Council; and
  - vi. the goals for improving the ADR systems over the next fiscal year; and
- k. prepare such reports as may be required for any grant-making organization.

3. The ADR Council, with approval of the Office of the Governor, may establish an advisory board of ADR practitioners to provide advice and guidance concerning establishment, maintenance and improvement in the state agencies.

4. The State ADR Council may, on an annual basis or as appropriate, nominate to the governor the recipient of the Utah Dispute Resolution Award to recognize outstanding service of an individual or agency in promoting the use of ADR in state government.

5. The purpose of this order is intended to facilitate the use of ADR in state government as the preferred option to reduce unnecessary and costly litigation. The implementation of this order shall be carried out in a manner consistent with law and conducive to the mission of each agency involved. The state ADR Council shall advise agency leaders on how to improve agency operations and processes through appropriate ADR. If an agency dispute process or operation does not by its nature or by law lend itself to ADR, the state ADR Council shall serve as a resource in suggesting other appropriate improvements. Nothing in this order is intended to require the hiring of additional staff, the creation of new offices of government, or the adoption of administrative rules by an agency. The hiring of new personnel is contingent on the availability of funding.

6. This Executive Order supersedes and replaces Integrating Dispute Resolution into State Government dated December 22, 2004.

7. This order shall remain in effect until superseded or rescinded by Executive Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done at the Capitol Complex in Salt Lake City, Utah this 8th day of November 2006.

(State Seal)

**Jon M. Huntsman, Jr.**  
**Governor**

**ATTEST:**

**Gary R. Herbert**  
**Lieutenant Governor**

2006/0010

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**Governor's Proclamation: Calling the Fifty-Sixth Legislature into a Fifteenth Extraordinary Session**

**PROCLAMATION**

**WHEREAS**, since the close of the 2006 General Session of the 56th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

**NOW, THEREFORE, I, JON M. HUNTSMAN, JR.**, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 56th Legislature into a Fifteenth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 15th day of November, 2006, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2006 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Salt Lake Capitol Complex in Salt Lake City, Utah, this 31st day of October, 2006.

(State Seal)

**Jon M. Huntsman, Jr.**  
**Governor**

**Gary R. Herbert**  
**Lieutenant Governor**

## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between October 17, 2006, 12:00 a.m., and November 1, 2006, 11:59 p.m. are included in this, the November 15, 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 December 15, 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 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 March 15, 2007, 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 seven calendar days after the close of the public comment period 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 Section 63-46a-4; and Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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

# Administrative Services, Administrative Rules

## R15-2

### Public Petitioning for Rulemaking

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29188

FILED: 11/01/2006, 15:59

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is amending Rule R15-2 to make its language conform to amendments made to Section 63-46a-12 by H.B. 316 (2006 General Session). This portion of the bill extended the time an agency has to respond to a petition for rulemaking from 30 days to 60 days for an agency or 80 days for a board. (DAR NOTE: H.B. 316 (2006) is found at Chapter 141, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: With this proposed amendment, the Division is making the rule conform to Section 63-46a-12, and is making other changes for clarification. At Section R15-2-2, the Division is adding a new definition for "petitioner." At Section R15-2-3, the Division is restating the sentence in active voice to clarify who must act. At Section R15-2-4, the Division is clarifying the information a petitioner must provide. At Section R15-2-5, the Division replaces language referring to the old time frame provided by Section 63-46a-12 with a reference to the statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-46a-12

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This proposed amendment imposes no costs nor accrues any savings to the state budget. The proposed amendment only makes the Division's rule consistent with H.B. 316. Any costs or savings related to this change were taken into account by the fiscal note to H.B. 316.
- ❖ LOCAL GOVERNMENTS: The Division does not regulate local government. Therefore, there are no costs or savings to local government.
- ❖ OTHER PERSONS: This proposed amendment imposes no costs nor accrues any savings to other persons. The proposed amendment only makes the Division's rule consistent with H.B. 316. Any costs or savings related to this change were taken into account by the fiscal note to H.B. 316.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by this rule include individuals or businesses who might petition an agency to change a rule. This rule imposes no costs nor accrues any savings to these persons. The proposed amendment only makes the Division's rule consistent with H.B. 316 and clarifies existing language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment brings the Division's existing rule into compliance with Section

63-46a-12 as amended by H.B. 316, and clarifies existing language. It does not have any fiscal impact on business. Richard Ellis, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Kenneth A. Hansen, Director

#### R15. Administrative Services, Administrative Rules.

##### R15-2. Public Petitioning for Rulemaking.

##### R15-2-2. Definitions.

- (1) Terms used in this rule are defined in Section 63-46a-2.
- (2) ~~In addition,~~ Other terms are defined as follows:
  - (a) "rule change" means:
    - ~~(i)~~(i) making a new rule;
    - ~~(ii)~~(ii) amending, repealing, or repealing and reenacting an existing rule;
    - ~~(iii)~~(iii) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63-46a-6;
    - ~~(iv)~~(iv) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
    - ~~(v)~~(v) any combination of the above.
  - (b) "petitioner" means an interested person who submits a petition to an agency pursuant to Section 63-46a-12 and this rule.

##### R15-2-3. Petition Procedure.

- (1) ~~The petitioner shall send~~~~[The~~ the petition ~~shall be addressed and delivered]~~ to the head of the agency authorized by law to make the rule change requested.
- (2) The agency receiving the petition shall stamp the petition with the date of receipt.

##### R15-2-4. Petition Form.

The petition shall:

- (a) be clearly designated "petition for a rule change";
- (b) state the petitioner's name;
- (c) state the petitioner's interest in the rule, including relevant affiliation, if any;
- (d) include the statement required by Subsection 63-46a-12(4);
- ~~(e)~~(e) state the approximate wording of the requested rule change;

~~(e)~~(f) describe the reason for the rule change;  
~~(d)~~(g) include an address, an E-mail address when available,  
 and telephone where the petitioner can be reached during regular ~~work~~  
~~days~~ business hours; and  
~~(e)~~(h) be signed by the petitioner.

**R15-2-5. Petition Consideration And Disposition.**

- (1) The agency head or designee shall:
  - (a) review and consider the petition;
  - (b) write a response to the petition stating:
    - (i) that the petition is denied and reasons for denial, or
    - (ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and
  - (c) send the response to the petitioner within ~~[30 days of receipt of the petition]~~ the time frame provided by Section 63-46a-12.
- (2) The petitioned agency may, within the time frame provided by Section 63-46a-12, interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its ~~[judgement]~~ judgment, deems necessary to provide the petition due consideration.
- (3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.
- (4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

**KEY: administrative law**

**Date of Enactment or Last Substantive Amendment:** ~~June 4, 1996~~ 2006

**Notice of Continuation:** September 29, 2005

**Authorizing, and Implemented or Interpreted Law:** 63-46a-12



**Administrative Services, Administrative  
 Rules  
 R15-4  
 Administrative Rulemaking Procedures**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 29189

FILED: 11/01/2006, 16:00

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is amending Rule R15-4 to make its language conform to amendments made to Section 63-46a-4 by H.B. 316 (2006 General Session). (DAR NOTE: H.B. 316 (2006) is found at Chapter 141, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: With this proposed amendment, the Division is changing Sections R15-4-2, R15-4-4, and R15-4-5. At Section R15-4-2, the Division is adding a new definition for "eRules." At Section R15-4-4, the Division is removing unnecessary language and is clarifying the scope of the section in its application to counting 30 days for the purposes of Sections 63-46a-4 and 63-46a-6. At Section R15-4-5, the Division is separating provisions addressing Notices of Effective Date for Proposed Rules (now Section

R15-4-5a) and Notices of Effective Date for Changes in Proposed Rules (now Section R15-4-5b). The Division is adding language clarifying when the earliest effective date after the close of comment may be. It is also adding language indicating the mechanism by which an agency may formally extend the comment period and clarifying when the earliest effective date may be after the close of extended comment. At Section R15-4-5b, the Division is adding new language requiring that a Change in Proposed Rule for which an agency designates a public comment period must be followed with the seven-day comment consideration period required for a Proposed Rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-46a-10

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This proposed amendment imposes no costs nor accrues any savings to the state budget. This proposed amendment only makes the Division's rule consistent with H.B. 316, and clarifies existing language. Any costs or savings related to this change were taken into account by the fiscal note to H.B. 316.

❖ LOCAL GOVERNMENTS: The division does not regulate local government. Therefore, there are no costs or savings to local government.

❖ OTHER PERSONS: This proposed amendment imposes no costs nor accrues any savings to other persons. This proposed amendment only makes the Division's rule consistent with H.B. 316, and clarifies existing language. Any costs or savings related to this change were taken into account by the fiscal note to H.B. 316.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed amendment imposes no costs nor accrues any savings to other persons. This proposed amendment only makes the Division's rule consistent with H.B. 316, and clarifies existing language. Any costs or savings related to this change were taken into account by the fiscal note to H.B. 316.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment brings the Division's existing rules into compliance with Subsection 63-46a-4(10) as amended by H.B. 316, and clarifies existing language. It does not have any fiscal impact on business. Richard Ellis, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Kenneth A. Hansen, Director

## **R15. Administrative Services, Administrative Rules.**

### **R15-4. Administrative Rulemaking Procedures.**

#### **R15-4-2. Definitions.**

- (1) Terms used in this rule are defined in Section 63-46a-2.
- (2) Other terms are defined as follows:
  - (a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63-46a-9(3), whichever is sooner.
  - (b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63-46a-10(1)(f);
  - (c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63-46a-4(2)(b);
  - (d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;
  - (e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;
  - (f) "eRules" means the Division's administrative rule filing application that agencies use to file rules and notices;
  - (g) "Savings" means:
    - (i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;
    - (ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;
    - (iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or
    - (iv) any combination of these aggregated monetary amounts.
  - (h) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63-46a-4(2)(b).

#### **R15-4-4. Thirty-day Comment Period for a Proposed Rule and a Change in Proposed Rule.**

- (1) For the purposes of ~~Subsections 63-46a-4(6) and 63-46a-4(7)~~ Sections 63-46a-4 and 63-46a-6, ~~[and in conformity with Utah Rules of Civil Procedure, Rule 6(a),]~~ "30 days" shall be computed by:
  - (a) counting the day after publication of the rule as the first day; and
  - (b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless
    - (c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the ~~[comment period runs until 5 p.m.]~~ thirtieth day is the next regular business day.
- (2) ~~A rule may be made effective on the day after the comment period expires.]~~

#### **R15-4-5a. Notice of the Effective Date ~~of a~~ for a Proposed Rule.**

- (1)(a) Pursuant to Subsection 63-46a-4(9), ~~u[pon]~~ upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.
  - (b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.
- (2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form ~~[designated for that purpose indicating the effective date]~~ using eRules.
  - (b) If the eRules Notice of Effective Date form ~~[designated]~~ is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.
- (3) The date designated as the effective date shall be:
  - (a) at least seven days after the comment period specified on the rule analysis[.]; or
  - (b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.
- (4) The division shall publish notice of the effective date in the next issue of the bulletin~~[and digest]~~. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

#### **R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.**

- (1)(a) Upon expiration of the 30-day period required by Section 63-46a-6, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the division of the date the rule is to become effective and enforceable.
  - (b) The agency shall notify the division after determining that the rule text as published is the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.
- (2)(a) The agency shall notify the division by filing with the division a Notice of Effective Date form using eRules.
  - (b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the division or published in the bulletin, and stating the effective date.
- (3) The date designated as the effective date shall be:
  - (a) at least 30 days after the publication date of the rule in the bulletin, or
  - (b) if the agency designated a comment period, at least seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a subsequent notice in the bulletin.
- (4) The division shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.



**KEY: administrative law**

**Date of Enactment or Last Substantive Amendment:** ~~July 1, 1998~~ **2006**

**Notice of Continuation:** September 29, 2005

**Authorizing, and Implemented or Interpreted Law:** ~~63-46a-10; 63-46a-4; 63-46a-6~~

◆ ————— ◆

## Commerce, Consumer Protection **R152-11** Utah Consumer Sales Practices Act

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29145

FILED: 10/23/2006, 09:32

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to reflect changes the Division believes are necessary to enforce the Utah Consumer Sales Practices Act Rules.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment of Section R152-11-5 changes "repairs" to "repairs, inspections and other services" in order to make the rule consistent throughout. The proposed amendment of Section R152-11-10 requires a supplier to provide a receipt to the consumer at the time of the transaction, changes certain terms, and provides a method for notice of a nonrefund, exchange or credit policy, to be placed in a sales document or contract. The proposed amendment of Section R152-11-12 expands "sends" to include "sends or offers" in relation to a negative option plan.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 63-46a-3 and 13-2-5, and Title 13, Chapter 11

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. These amendments have no impact on the cost to administer the rule.

❖ **LOCAL GOVERNMENTS:** The proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated.

❖ **OTHER PERSONS:** Those persons who decide to provide notice of their nonrefund, exchange, or credit policy, by a statement on their sales document or contract will face certain costs associated with altering their sales documents or contracts.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Those persons who decide to provide notice of their nonrefund, exchange, or credit policy, by a statement on their sales document or contract will face certain costs associated with altering their sales documents or contracts.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There appears to be no discernible fiscal impact to businesses as a result of this rule filing, which makes technical amendments and clarifies standards for deposits and refunds and negative options. Francine A. Giani, Executive Director

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

COMMERCE  
CONSUMER PROTECTION  
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:**

Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at [tcopeland@utah.gov](mailto:tcopeland@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Kevin V Olsen, Director

\_\_\_\_\_

**R152. Commerce, Consumer Protection.  
R152-11. Utah Consumer Sales Practices Act.  
R152-11-5. Repairs and Service.**

A. It shall be a deceptive act or practice in connection with a consumer transaction involving ~~repairs or services~~ repairs, inspections, or other services for a supplier to:

(1) Fail to obtain the consumer's express authorization for repairs, inspections, or other services. The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the estimated charges for those repairs, inspections or other services, and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate. For repairs, inspections or other services that exceed a value of \$25, the consumer's express authorization shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain the consumer's express authorization for additional, unforeseen, but necessary, ~~repairs~~ repairs, inspections, or other services when those ~~repairs~~ repairs, inspections, or other services amount to ten percent (10%) or more (excluding tax) of the original

estimate. The consumer's express authorization for such additional ~~[repairs]~~repairs, inspections, or other services shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(3) Fail to re-assemble any parts disassembled for inspection unless the consumer is so advised, prior to acceptance for inspection by supplier that there will be a charge for re-assembly of the parts or that it is not possible to re-assemble such parts;

(4) Charge for ~~[repairs]~~repairs, inspections, or other services which have not been authorized by the consumer;

(5) In the case of an in-home service call where the consumer had initially contacted the supplier, to fail to disclose before the supplier's repairman goes to the consumer's residence that a service or diagnostic charge will be imposed, even though no repairs may be effected;

(6) Represent that ~~[repairs]~~repairs, inspections, or other services are necessary when such is not the fact;

(7) Represent that ~~[repairs]~~repairs, inspections, or other services must be performed away from the consumer's residence when such is not the fact;

(8) Represent that ~~[repairs]~~repairs, inspections or other services have been made when such is not the fact;

(9) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the consumer's continued use of them may be harmful to him when such is not the fact;

(10) Intentionally understate or misstate materially the estimated cost of ~~[repair services]~~repairs, inspections, or other services;

(11) Fail to provide the consumer with an itemized list of ~~[repairs]~~repairs, inspections, or other services performed and the reason for such ~~[repairs]~~repairs, inspections, or other services, including:

(a) A list of parts and a statement of whether they are new, used, rebuilt, or after market, and the cost thereof to the consumer; and

(b) The number of hours of labor charged, apportioned for each part, service or repair, and the name or other reasonable means of identification of the mechanic or repairman performing the service, provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis and such has been previously disclosed to the consumer in writing.

(12) Fail to give reasonable written notice before ~~[repairs or services]~~repairs, inspections, or other services are provided, that replaced or repaired parts may be inspected or fail to allow the consumer to inspect replaced or repaired parts on request, unless:

(a) the parts are to be rebuilt or sold by the supplier and such intended reuse is made known to the consumer by written notice on the original estimate; or

(b) the parts are to be returned to the manufacturer or distributor under a written warranty agreement; or

(c) the parts are impractical to return to the consumer because of size, weight, or other similar factors; or

(d) the consumer waives the return of such parts in writing after repairs are completed and a total cost is presented.

(13) Fail to provide to the consumer a written, itemized receipt for any consumer commodities that are left with, or turned over to, the supplier for ~~[repairs or services]~~repairs, inspections, or other services. Such receipt shall include:

(a) The exact name and business address of the business entity (or person, if the entity is not a corporation or partnership) which will repair or service the consumer commodities.

(b) The name and signature of the person who actually takes the consumer commodities into custody.

(c) The name of any entity to whom such ~~[repairs or services]~~repairs, inspections, or other services are sublet including the address, phone number and a contact person at such entity.

(d) A description including make and model number or such other features as will reasonably identify the consumer commodities to be repaired or serviced.

#### **R152-11-10. Deposits and Refunds.**

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept a deposit unless the following conditions are met:

(1) The deposit obligates the supplier to refrain for a specified period of time from offering for sale to any other person the consumer commodities in relation to which the deposit has been made by the consumer if such consumer commodities are unique; provided that a supplier may continue to sell or offer to sell consumer commodities on which a deposit has been made if he has available sufficient consumer commodities to satisfy all consumers who have made deposits;

(2) All deposits accepted by a supplier must be evidenced by dated receipts, provided to the consumer at the time of the transaction, stating the following information:

(a) Description of the consumer commodity, (including model, model year, when appropriate, make, and color);

(b) The cash selling price;

(c) Allowance on the consumer commodity to be traded in, if any;

(d) Time during which the option is binding;

(e) Whether the deposit is refundable and under what conditions; and

(f) Any additional cost such as delivery charge.

(3) For the purpose of this rule "deposit" means any payment in cash, or of anything of value or an obligation to pay including, but not limited to, a credit device transaction incurred by a consumer as a deposit, refundable or non-refundable option, or as partial payment for consumer commodities.

B. It shall be a deceptive act or practice in connection with a consumer transaction when the consumer can provide reasonable proof of purchase from a supplier for the supplier to refuse to give refunds for:

(1) Used, damaged or defective ~~[consumer commodities]~~products, unless they are clearly marked "as is" or with some other conspicuous disclaimer of any implied or express warranty, and also clearly marked that no refund will be given; or

(2) Non-used, non-damaged or non-defective ~~[goods]~~products unless:

(a) Such non-refund, exchange or credit policy, including any applicable restocking fee, is clearly indicated by:

(i) a sign posted at the point of display, the point of sale, the store entrance~~[or]~~;

(ii) [through]adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile machine, via e-mail, or over the Internet; or

(iii) a clear and conspicuous statement on the first or front page of any sales document or contract at the time of the sale.

(b) The consumer commodities are food, perishable items, merchandise which is substantially custom made or custom finished.

(3) For the purpose of this rule "refund" means cash if payment were made in cash provided that if payment were made by check the refund may be delayed until the check has cleared; and further provided that if payment were made by debit to a credit card or other account, then refund may be made by an appropriate credit or refund pursuant to the applicable law.

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

(1) In determining the amount required to be refunded under this rule, the supplier may take into consideration the nature of the commodity returned, the condition of the commodity returned, shipping charges if agreed to and any lawful restocking fee.

(2) For purposes of this rule, "reasonable time" means within 30 days of the date of the deposit unless a longer period is justified due to the nature of the commodity returned or any agreement between the parties.

D. No deposit accepted by a supplier to secure the value of equipment or materials provided to a consumer for the consumer's use in any business opportunity where it is anticipated by either the consumer or the supplier that some remuneration will be paid to the consumer for services or goods supplied to the supplier or to some third party in the behalf of the supplier shall exceed the actual cost of the supplies or equipment paid by the supplier or any person acting on behalf of the supplier.

#### **R152-11-12. Negative Options.**

##### A. Definitions:

1. A "negative option plan" means a contract under which a supplier either:

a. sends or offers to a consumer an announcement, advertisement or notice that:

i. the supplier proposes to send goods or provide services to the consumer (other than periodic supplements to previously acquired merchandise), and

ii. the consumer is required to pay for those goods or services unless the consumer affirmatively communicates that he refuses to accept the goods or services; or

b. sends or offers to a consumer a notice accompanying goods or services provided to the consumer that requires or purports to require that the consumer pay for those goods or services unless the customer affirmatively communicates that he refuses to accept the goods or services.

2. "Contract" includes, but is not limited to, any contract, marketing plan, arrangement or agreement between a supplier and a consumer.

B. Except as provided in paragraph C herein, the following acts or practices constitute a deceptive or unconscionable act or practice:

1. a supplier sends or offers goods or provides services to a consumer pursuant to a negative option plan;

2. a supplier interrupts, terminates, cancels or denies delivery of or provision of goods or services previously contracted for to a consumer solely on the basis that the consumer has not paid for or returned to the supplier goods or services which the consumer has not ordered, requested or authorized from the supplier.

C. Negative option plans do not constitute deceptive or unconscionable acts or practices if:

1. the supplier first receives specific approval, in writing and signed by the consumer, to send goods or services pursuant to a negative option plan.

a. The "specific approval" referred to in subparagraph B.1. of this rule shall be in writing and shall include the signature of the consumer.

b. The supplier shall maintain the original signed written consent of the consumer for a period of at least five (5) years after the date of signing or two (2) years after termination of the contract or agreement, whichever is longer; and

2. The following disclosures, or disclosures substantially similar to the following, are on the face of the contract or document evidencing the negative option plan and provided to the consumer before the consumer approves of the plan:

a. in bolded type which is 10 points or larger, that the transaction includes a "NEGATIVE OPTION PLAN"; and

b. the terms and conditions under which the negative option may be exercised, clearly and understandably stated; and

c. near the signature of the person entering into the consumer transaction, in bold type which is 10 points or larger: "I UNDERSTAND THAT THIS CONSUMER TRANSACTION INVOLVES A NEGATIVE OPTION, AND THAT I MAY BE LIABLE FOR PAYMENT OF FUTURE GOODS AND SERVICES UNDER THE TERMS OF THIS AGREEMENT IF I FAIL TO NOTIFY THE SUPPLIER NOT TO SUPPLY THE GOODS OR SERVICES DESCRIBED."

**KEY: advertising, bait and switch, consumer protection**

**Date of Enactment or Last Substantive Amendment:** ~~May 20, 2004~~2006

**Notice of Continuation:** June 3, 2002

**Authorizing, and Implemented or Interpreted Law:** 63-46a-3; 13-2-5; 13-11

## Commerce, Consumer Protection **R152-22** Charitable Solicitations Act

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29143

FILED: 10/20/2006, 16:08

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule change accommodates the steady increase each year in the number of applications and renewals for professional fund raiser, fund raising counsel, or consultant permits.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment extends the time that initial applications for professional fund raiser, fund raising counsel, or consultant permits and renewals of registration must be processed from 10 business days to 20 business days. The proposed amendment also updates statutory references.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 13-2-5, 13-22-6, and 13-22-9

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the proposed amendment only extends the time that initial application and renewals must be processed and updates statutory references.

❖ LOCAL GOVERNMENTS: The proposed amendment does not apply to local governments; therefore, no costs or savings are anticipated.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons because the proposed amendment only extends the time that initial application and renewals must be processed and updates statutory references.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs will be incurred due to the nature of the rule because the proposed amendment only extends the time that initial application and renewals must be processed and updates statutory references.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing extends the Division's time frame for processing of registration applications and renewals, which is necessary due to the increased applications received by the Division. It is not clear what if any impact there will be to businesses 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  
CONSUMER PROTECTION  
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:

Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at [tcopeland@utah.gov](mailto:tcopeland@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Kevin V Olsen, Director

**R152. Commerce, Consumer Protection.**

**R152-22. Charitable Solicitations Act.**

**R152-22-3. Application for Charitable Organization Permit.**

(1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.

(2) A statement of collections and expenditures shall be executed on the form authorized by the division.

(3) Applicants or registrants shall submit to the division, on request:

(a) an updated copy of a financial statement prepared by an independent certified public accountant;

(b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) a copy of the applicant's or registrant's IRS Section 501(c)(e) tax exemption letter, if applicable;

(g) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; and

(h) a copy of the applicant's IRS Form 990, 990EZ or 990PF.

(4) All initial applications and renewals of registration in accordance with Section ~~[13-22-42(5)]~~13-22-5 shall be processed within twenty (20) business days after their receipt by the division.

**R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.**

(1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.

(2) The application shall include a copy of all contracts, agreements, or other documents showing:

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

(b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers; and

(f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks.

(3) All initial applications and renewals of registration in accordance with Section ~~[13-22-42(5)]~~13-22-5 shall be processed within ~~[40]~~twenty (20) business days ~~[of]~~after their receipt by the division.

**KEY: charity, consumer protection, solicitations**

**Date of Enactment or Last Substantive Amendment:** ~~May 16, 2006~~

**Notice of Continuation:** October 30, 2002

**Authorizing, and Implemented or Interpreted Law:** 13-2-5; 13-22-6; 13-22-8; 13-22-9; 13-22-10

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## Commerce, Consumer Protection

# R152-34-5

### Rules Relating to Institutions Exempt Under Section 13-34-105

#### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29144  
FILED: 10/20/2006, 16:15

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the proposed amendment is to clarify the exemption set out in Subsection 13-34-105(1)(f).

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment clarifies that the exemption set out in Subsection 13-34-105(1)(f) includes organizations, associations, societies, labor unions, and franchise systems which meet the following requirements: 1) the organization, association, society, labor union, or franchise system does not recruit students; 2) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed; 3) the cost of the course of instruction is paid for by the employer, not the student; and 4) enrollment in each course of instruction is limited to those who are bona fide employees of the employer.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 13-2-5(1)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the proposed amendment merely clarifies which institutions are exempt under Subsection 13-34-105(1)(f).

❖ **LOCAL GOVERNMENTS:** The proposed amendment does not impact local governments; therefore, no costs or savings are anticipated.

❖ **OTHER PERSONS:** There are no anticipated costs or savings to other persons because the proposed amendment merely clarifies which institutions are exempt under Subsection 13-34-105(1)(f).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because the proposed amendment merely clarifies which institutions are exempt under Subsection 13-34-105(1)(f).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies the standards regarding exempt organizations. No 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  
CONSUMER PROTECTION  
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:

Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at [tcopeland@utah.gov](mailto:tcopeland@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Kevin V Olsen, Director

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**R152. Commerce, Consumer Protection.**  
**R152-34. Postsecondary Proprietary School Act Rules.**  
**R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.**

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the division upon request.

(4) To be exempt under Section 13-34-105(f)[-];

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system[-] or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) The division shall determine an institution's status in accordance with the categories contained in this section.

(6) An exempt institution shall notify the division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(7) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

(8) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.

**KEY: education, postsecondary proprietary school, registration**  
**Date of Enactment or Last Substantive Amendment: 2006**  
**Authorizing, and Implemented or Interpreted Law: 13-2-5(1)**

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## Community and Culture, History **R212-7** Cultural Resource Management

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 29168

FILED: 10/30/2006, 13:57

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule establishes time frames and procedures in response to state and federal agency requests.

**SUMMARY OF THE RULE OR CHANGE:** Section 9-8-404 has been amended (see H.B. 139, 2006 General Session) which establishes a joint analysis process between agencies, the State Historic Preservation Office, and the Governor's Public Lands Policy Coordination Office which eliminates the need for this rule. Section 9-8-404 was also amended to read that objections or advice can go through a joint analysis process as determined by the Governor's Public Land Policy Coordination Office. (DAR NOTE: H.B. 139 (2006) is found at Chapter 292, Laws of Utah 2006, and was effective 03/01/2006.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 9-8-404 and 9-8-305

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** None--This process has been replaced through statutory changes and determined by the legislature to have no fiscal impact to the state.
- ❖ **LOCAL GOVERNMENTS:** None--This process has been replaced through statutory changes and determined by the legislature to have no fiscal impact to local governments.
- ❖ **OTHER PERSONS:** None--This process has been replaced through statutory rule changes and determined by the legislature to have no fiscal impact to other individuals.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This process has been replaced through statutory changes and will impose no additional compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no fiscal impacts on businesses. Palmer DePaulis, Executive Director

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

COMMUNITY AND CULTURE  
 HISTORY  
 300 RIO GRANDE  
 SALT LAKE CITY UT 84101-1182, or  
 at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Alycia Aldrich at the above address, by phone at 801-533-3556, by FAX at 801-533-3567, or by Internet E-mail at AALDRICH@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Philip F Notarianni, Director

### **R212. Community and Culture, History.** ~~**[R212-7. Cultural Resource Management.**~~

#### ~~**R212-7-1. Scope and Applicability.**~~

~~— Purpose: to establish time frames and procedures in response to state and federal agency requests in conformance with applicable state and federal cultural resource management laws, rules, and regulations contained in Section 9-8-404, Utah Code; 36 CFR 800 (01-11-2001 edition) and 16 USC 470 Section 110 of the National Historic Preservation Act as amended. These federal laws and regulations are incorporated by reference in this rule.~~

#### ~~**R212-7-2. Definitions.**~~

~~— A. Terms used in this rule are defined in Section 9-8-302, 36 CFR 800 (01-11-2001 edition), and 16 USC 470 Section 110 of the National Historic Preservation Act as amended.~~

~~— B. In addition:~~

- ~~— 1. "division" means the Division of State History;~~
- ~~— 2. "director" means the director of the Division of State History;~~

#### ~~**R212-7-3. Conformance of Division to State Rules and Federal Regulations.**~~

~~— A. The Division of State History will follow applicable regulations pursuant to an annually executed agreement with the National Park Service and state rules to insure that its activities take into account the effect on cultural resources.~~

~~— 1. The division shall seek creative solutions to avoid or minimize adverse effects on cultural resources and seek ways to allow adverse effects to be mitigated creatively when they cannot be avoided.~~

~~— B. In that regard, the division shall encourage alternative proposals which may allow for the destruction of a site(s) or area(s)~~

~~when alternative mitigation or treatment plans can be made which will allow for the development, endowment, promotion, scientific investigation of other resources more suited to public education, education involvement, appreciation and science.~~

**~~R212-7-4. Division Responsibility to Other Agencies.~~**

~~1. The division may consult with or provide professional information to state and federal agencies requesting consultation under Section 9-8-404, Utah Code and under 16 USC 470 Sections 106 and 110 the Historic Preservation Act of 1966 as amended. These federal regulations are incorporated by reference in this rule.~~

~~2. The information provided to a consulting person or entity will be limited to standards and regulations as issued by the U.S. Secretary of the Interior.~~

~~3. If the division responds, then it shall state that the federal or state agency shall take into account the comments.~~

~~4. Responses may be provided within 30 days of receipt of request.~~

~~5. Adequate completion of permit requirements for excavation on lands may satisfy mitigation as far as the State Historic Preservation Officer is concerned.~~

**KEY: historic preservation, cultural resources, management**

**Date of Enactment or Last Substantive Amendment: May 21, 2002**

**Notice of Continuation: September 26, 2001**

**Authorizing, and Implemented or Interpreted Law: 9-8-302; 9-8-404; 16 USC 470 Sec. 106; 16 USC 470 Sec. 110]**



Education, Administration  
**R277-471**  
Oversight of School Inspections

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29179

FILED: 11/01/2006, 10:11

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to address concerns expressed by municipal and county building inspectors that school district and charter school facilities may not have adequate construction inspection oversight by the Utah State Board of Education. The amended rule provides for clearer and more specific standards and procedures for identifying local school board and charter school board responsibilities and accountability to the Utah State Board of Education. An ad hoc committee was organized to look at the issues. The amendments to this rule include recommendations by the ad hoc committee. Amendments to this rule also include requirements in H.B. 172, 2006 Legislative General Session. (DAR NOTE: H.B. 172 (2006) is found at Chapter 364, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: The changes provide new and amended definitions, provide more clear and specific requirements for identifying a school district building official and charter school responsible person and the responsibilities of that individual, provide for better coordination with local governments, utility providers and the state fire marshal on public school construction, provide for charter school land use zoning within municipalities and counties, provide for clear public school district and charter school construction inspection processes, and provides for monitoring and enforcement.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated cost or savings to state budget. The amendments to this rule provide for clearer standards and procedures for better accountability to an already existing process.

❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. The amendments to this rule provide for clearer standards and procedures for better accountability to an already existing process.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The inspection process involves school districts and local government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments to this rule provide for clearer standards and procedures for better accountability to an already existing process.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2006

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

## R277. Education, Administration.

### R277-471. Oversight of School Inspections.

#### R277-471-1. Definitions.

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

B. "Certified plans' examiner" means a professional who has current certification through the International Code Council which requires a rigorous testing program.

C. "Charter schools" means:

(1) schools acknowledged and operating as charter schools by local boards of education under Section 53A-1a-505 or by the Board under Section 53A-1a-515; and

(2) charter school applicants that have their applications approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, the Utah Charter Schools Act.

D. "Charter school responsible person or local charter school board building officer (charter school designee)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with the Code on behalf of the charter school board.

E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53A-20-104, 53A-20-105, 10-9a-305, 17-27a-305, and 58-56, Uniform Building Standards Act, as well as the provisions of this rule. The form available on the USOE School Finance and Statistics Section Web page: <http://www.schools.utah.gov/finance/facilities/default.htm>.

~~[D]E.~~ "[State adopted building code (Code)]" means the state-adopted construction code, including all statutes and administrative rules which control the construction, ~~and~~ renovation, and inspection of Utah public school buildings ~~in Utah~~.

G. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(1).

~~[B]H.~~ "Public School District Building Official["] (SDBO)" means the ~~officer~~ individual or authority designated by the public school district who has direct administrative and operational control of school district construction ~~and~~ renovation and ~~directs~~ is responsible for the school district's compliance with the ~~state adopted building e~~ Code ~~in the school district~~.

~~[C]I.~~ "Superintendent" means the State Superintendent of Public Instruction.

~~[E]J.~~ "School Building Construction and Inspection Resource Manual (Resource Manual)" means a manual which identifies the processes and procedures a school district or charter school ~~must~~ shall follow when constructing a new public school building or renovating existing buildings. The Resource Manual was developed by the USOE in response to legislative direction under Section 53A-20-104.5, and is available ~~in all school district offices and in~~ on the USOE School Finance and Statistics Section ~~of the USOE~~ Web page: <http://www.schools.utah.gov/finance/facilities/default.htm>.

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

#### R277-471-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, ~~and~~ Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify local school board and charter school board responsibilities and accountability to the Board.

#### R277-471-3. School District Building Official, and Charter School Responsible Person.

A. ~~[Section 58-56-4 provides for adoption of a building code authority which provides for a code enforcement agency. School districts are designated as code enforcement agencies for school construction within the district's jurisdiction.~~

B. ~~As a code enforcement agency, school districts shall~~ Local boards of education and local charter school boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code.

(1) Local school boards shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction, ~~and~~ renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code. Each local charter school board shall appoint a local charter school board building officer who has direct operational responsibility for construction, renovation, and inspection of the charter school. The local charter school board building officer shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

(c) Following notification, the USOE shall provide a construction project number.

~~[C]B.~~ The SDBO shall monitor school district building construction to ~~require~~ ensure compliance with the provisions of the Code.

C. The local charter school board building officer shall monitor all charter school building construction to ensure compliance with the provisions of the Code.

~~[D]D.~~ The SDBO and local charter school board building officer shall render interpretations of the Code for the school district or charter school. Such interpretations shall be in conformance with the intent and purpose of the Code, insofar as they are expressed in the Code or in legislative intent.

~~[E]E.~~ The SDBO and local charter school board building officer may adopt and enforce supplemental school district and charter school policies under appropriate school district and charter



school policies to clarify the application of the provisions of the Code for school district and charter school personnel.

~~[F. The SDBO shall send monthly construction inspection summary reports to the USOE and to appropriate local governmental entity building officials on each project that has a USOE project number and exceeds \$99,999 in cost. The school district shall retain copies of all individual inspection reports at an identified location in the district for monitoring, auditing and potential review purposes by the USOE.]~~ F. Before any school district or charter school construction project begins, school districts and charter schools shall obtain a construction project number from the USOE and complete and submit construction project identification forms provided by the USOE for all projects which exceed \$99,999 in cost.

G. All school district and charter school plans and specifications shall be approved by a certified plans' examiner before any school district or charter school construction project begins.

H. If a school district or charter school is unable to provide appropriate and proper school construction inspection services, the Superintendent may provide for inspection services from a list of inspectors determined by the Superintendent and charge the school district or charter school for those services. Fees shall be established in advance of inspection services.

I. For all school district or charter school projects that exceed \$99,999, the SDBO and local charter school board building officers shall:

(a) submit inspection summary reports monthly to the USOE;

(b) submit inspection summary reports monthly to the appropriate local government entity building official;

(c) submit inspection certificates to the USOE and appropriate local government entity building official;

(d) maintain all submitted documentation at a designated school district/charter school location for auditing or monitoring;

(e) identify and provide to the USOE and local government entity building official the total number of inspections with the name, state license number, and disciplines of each inspector;

(f) ensure that each inspector is adequately and appropriately credentialed;

(g) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with the law and this rule.

(h) send the final inspection certification and inspection verification to the USOE and to the appropriate local government entity building official upon completion of the project;

J. Reports required under this rule may be paper or electronic.

~~[— G. The SDBO shall send final inspection certification to the USOE and to the appropriate local governmental entity upon completion of each project. The district, through the SDBO, shall identify the monthly total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections. The SDBO shall sign a final inspection certification form, certifying that all inspections were completed in accordance with the Code.~~

#### **R277-471-4. Coordination with Local Governments, Utility Providers and State Fire Marshal.**

A. Prior to developing plans and specifications for a new public school, or the expansion of an existing public school, school districts and charter schools shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future roadways;

(4) maximize school, student and site safety.

B. Prior to developing plans and specifications for a new public school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments and the State Fire Marshal.

C. School districts and charter schools shall maintain documentation for audit purposes of coordination, meetings, and agreements.

#### **R277-471-5. Charter School Land Use Zoning within Municipalities and Counties.**

A. If consistent with the general plan, a charter school shall be considered a permitted use in all zoning districts within a municipality or county, except as provided in R277-471-5D.

B. Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis by municipalities and counties.

C. Parking requirements for a charter school may not exceed the minimum parking requirements for traditional public schools of like size and grade levels or other institutional public uses throughout the municipality or county.

D. If a municipality or county has designated zones for sexually oriented businesses, or businesses which sell alcohol, a charter school may be prohibited from locations which would defeat the purpose for the zone, unless the charter school provides a waiver of liability for the local government entity by the charter school governing board in an open meeting.

#### **R277-471-6. Public School District/Charter School Construction Inspection.**

A. A public school district or charter school may employ one of three methods for school construction inspection:

(1) An independent, properly licensed and certified building inspector;

(2) a properly licensed and certified building inspector, employed by the school district; or

(3) a properly licensed and certified building inspector approved by the local jurisdiction in which the construction activity occurs.

B. Procedure for independent properly licensed and certified building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.

(2) The school district, through the SDBO, or charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) The independent building inspector shall:

(a) not be an employee of the architect, contractor or any subcontractor on the project;

(b) be approved by the applicable local government or school district building inspector; and

(c) be properly licensed and certified to perform all of the inspections that the inspector is required to perform.

(4) After completion of the project, the SDBO or charter school designee shall, upon completion of all required inspections of the school building, file with the USOE and the building inspector of the local jurisdiction in which the building is located, a certificate of inspection verification, certifying that all inspections were completed in accordance with the Code.

(5) The school district or charter school shall seek a certificate authorizing permanent occupancy of the school building from the Superintendent.

(6) Within 30 days after the school district or charter school files a request for the issuance of a certificate authorizing permanent occupancy of the school building, the Superintendent shall:

(a) issue to the school district or charter school a certificate authorizing permanent occupancy of the school building; or

(b) deliver to the local school board or charter school board a written notice indicating deficiencies in the school district's or charter school's compliance with the inspection findings; and

(c) mail a copy of the certificate authorizing permanent occupancy or the notice of deficiency to the building official of the local government entity in which the school building is located.

(7) Upon the local school or charter school board's filing of the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the school district or charter school shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the school district or charter school has complied with all applicable fire and life safety code requirements.

(8) Upon the school district or charter school remedying any inspection deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building and mail a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

(9) The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the public school building.

(10) The Superintendent may charge the school district or charter school a fee not to exceed the actual cost of performing the inspection(s) for inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the school building.

(11) A certificate authorizing permanent occupancy issued by the Superintendent shall be considered to satisfy any municipal or county requirement(s) for an inspection or a certification of occupancy.

C. Procedures for properly licensed and certified school district building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection

certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.

(2) The school district, through the SDBO, or the charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used a building inspector employed by the public school district for inspection of the school building.

(4) Charter schools:

(a) After completion of the project, the charter school may seek a certificate of occupancy from the SDBO of the school district providing the inspection services.

(b) If the charter school seeks a certificate of occupancy from the SDBO, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the municipality or county in which the building is located.

(c) A certificate authorizing permanent occupancy issued by a SDBO with authority to issue the certificate shall satisfy any municipal or county requirement for an inspection or a certification of occupancy.

D. Procedure for properly licensed and certified local municipal or county building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the public school building to the Superintendent for each project that exceeds \$99,999 in cost.

(2) The school district, through the SDBO or charter school designee, shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A public school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(4) Charter schools:

(a) After completion of the project, the charter school designee shall obtain a completed certificate of inspection verification form from the local municipal or county building inspector certifying that all inspections were completed in accordance with the Code and file the form with the USOE.

(b) A charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

E. A municipality or county may not:

(1) require school districts or charter schools to landscape, fence, make aesthetic improvements, use specific construction methods or materials, impose requirements for buildings used only for educational purposes, or place limitations prohibiting the use of temporary classroom facilities on school property. All temporary classroom facilities shall be properly inspected to meet the Code.

(2) require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study of the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated public school or an existing roadway;

(3) require a school district or charter school to pay fees not authorized under 10-9a-305 or 17-27a-305;

(4) require inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by properly licensed and certified inspectors, other than the project architect, contractor or subcontractors;

(5) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the school project upon the need that the improvement is to address; or

(6) impose regulations upon the location of a public school project except as necessary to avoid unreasonable risks to health or safety of students.

F. A municipality or county may, at its discretion, schedule a time with school district or charter school officials to:

(1) provide a walk-through of school construction at no cost and at a time convenient to the school district or charter school; and

(2) provide recommendations based on the walk-through.

**R277-471-[4]7. School Building Construction and Inspection Resource Manual.**

A. The USOE shall develop and distribute to each school district and charter school a Resource Manual.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board, local school boards, ~~and~~ charter school boards, as well as school district and charter school personnel shall act consistent with the Resource Manual.

**R277-471-[5]8. Annual Construction and Inspection Conference.**

A. The USOE shall sponsor an annual school construction conference for representative(s) from each school district, charter school, and interested persons involved in the school building construction industry. The conference shall:

(1) provide current information on the design, construction, and inspection process of school buildings;

(2) provide training on school site selection, design, construction, lowest life-cycle costing, and construction inspection matters as determined by the USOE; and

(3) offer and discuss information to improve the existing public school building construction inspection program.

**R277-471-9. Enforcement.**

A. School districts and charter schools which fail to comply with the provisions of this rule are subject to interruption of state aid dollars by the Board in accordance with Section 53A-1-401(3) and 53A-17a-144(4)(d).

B. Violation of any land use regulation and the substantive provisions of all Codes is a class C misdemeanor and may be subject to further civil penalties, as established by local ordinance.

**KEY: educational facilities**

**Date of Enactment or Last Substantive Amendment:** ~~November 2, 1999~~ **2006**

**Notice of Continuation:** November 1, 2004

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-401(3); 53A-20-104; 53A-20-104.5; 10-9-106; 17-27-105; ~~53A-17a-144(4)(d)~~

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## Environmental Quality, Water Quality

# R317-1-2

## General Requirements

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 29186

FILED: 11/01/2006, 12:52

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment will provide a uniform and objective process for producers, state regulators, and government service agencies to determine the appropriate liner for any liquid waste storage facility at an animal feeding operation, regardless of the size of the animal feeding operation, by applying site-specific characteristics to Tables 2a, 2b, and 2c of the August 30, 2006, Natural Resource Conservation Service (NRCS) Conservation Practice Standard Waste Storage Facility Code 313.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment incorporates into rule by reference Tables 2a, 2b, and 2c of the August 30, 2006, NRCS Conservation Practice Standard, Waste Storage Facility, Code 313. These tables will be used to determine the siting, investigation, and liner design for animal waste lagoons and runoff ponds based on the risk and vulnerability of ground water contamination using site-specific characteristics such as ground water quality class, soil type and permeability, and depth to ground water.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Tables 2a, 2b and 2c of Natural

Resources Conservation Service Conservation Practice Standard Waste Storage Facility Code 313, August 30, 2006

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No impact to state budget is anticipated. The amendment may benefit the Division of Water Quality (DWQ) by reducing the number of permits that must be issued directly as a result of NRCS providing direct oversight of liner design and construction for small agricultural operations.

❖ LOCAL GOVERNMENTS: No impact to local government budgets is anticipated because the proposed amendments do not apply to that sector.

❖ OTHER PERSONS: Individual producers with small animal feeding operations will have a cost benefit by having the option of NRCS oversight instead of DWQ oversight. NRCS does not charge fees for services while DWQ oversight fees are \$70 per hour for design review and approval, construction permit preparation, and construction inspections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individual producers with small animal feeding operations will have a cost benefit by having the option of NRCS oversight instead of DWQ oversight. NRCS does not charge fees for services while DWQ oversight fees are \$70 per hour for design review and approval, construction permit preparation, and construction inspections. Technical oversight costs will only be incurred for liquid waste storage facilities at large animal feeding operations that require Division of Water Quality permits. Based on cost evaluation and analysis by the agricultural stakeholder best available technology work group, there may be small additional costs for a producer if a synthetic liner is required instead of a clay liner. However, on the other hand, if a suitable onsite clay source is not available, the costs of importing clay will be higher than the cost and installation of a synthetic liner. Therefore, the costs of installing a clay liner versus a synthetic liner are similar and should not represent a significant compliance cost for the permit applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will provide a fiscal benefit to small agricultural producers by empowering NRCS to provide conservation assistance for animal waste lagoons and runoff ponds instead of fee-based permitting and technical oversight by DWQ. In addition, research by the stakeholder work group demonstrated that the costs are comparable for constructing either a clay or synthetic liner. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY  
WATER QUALITY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at [dwham@utah.gov](mailto:dwham@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 01/19/2007

AUTHORIZED BY: Walter Baker, Director

**R317. Environmental Quality, Water Quality.**

**R317-1. Definitions and General Requirements.**

**R317-1-2. General Requirements.**

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers), except to an existing sewer system, without first receiving a permit to do so from the Board or its authorized representative, except as provided in R317-1-2.5. Issuance of such permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

2.3 Submission of Plans. Any person desiring a permit as required by R317-1-2.2, shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, & Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet or less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

2.4 Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these regulations.

2.5 Exceptions.

A. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with regulations for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance

with the regulations shall be determined by an on-site inspection by the appropriate health authority.

B. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.6 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these regulations and under circumstances which assure compliance with water quality standards in R317-2.

2.7 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these regulations and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

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

**Date of Enactment or Last Substantive Amendment:** ~~August 22, 2005~~ **2006**

**Notice of Continuation:** October 7, 2002

**Authorizing, and Implemented or Interpreted Law:** 19-5

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## Environmental Quality, Water Quality R317-6-6 Implementation

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29185  
FILED: 11/01/2006, 12:52

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment will clarify that a ground water discharge permit is required for any new or modified existing liquid waste storage facility for a large animal feeding operation not permitted by rule under Subsection R317-6-6(6.2). The rule also clarifies that the permit applicant must comply with the requirements of Section R317-1-2 for submitting plans and specifications and obtaining a construction permit, including the new Natural Resource Conservation Service (NRCS) liner criteria tables proposed in a concurrent rulemaking action for Section R317-1-2. This amendment is intended to remove previous confusion and misunderstandings by agricultural producers regarding the permit requirements for large animal feeding operations with liquid water handling systems. (DAR NOTE: The proposed

amendment to Section R317-1-2 is under DAR No. 29186 in this issue, November 15, 2006, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment states that no person shall construct, install, or operate any new liquid waste storage facility or modify an existing or new liquid waste storage facility for a large animal feeding operation not permitted by rule under Section R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed and the applicant must comply with the requirements of Section R317-1-2 for submitting plans and specifications and obtaining a construction permit.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No impact to the state budget is anticipated. The amendment may benefit the Division of Water Quality (DWQ) by reducing the number of permits that must be issued directly as a result of NRCS providing direct oversight of liner design and construction for small agricultural operations.

❖ LOCAL GOVERNMENTS: No impact to local government budgets is anticipated because the proposed amendments do not apply to that sector.

❖ OTHER PERSONS: Individual producers with small animal feeding operations will have a cost benefit by having the option of NRCS oversight instead of DWQ oversight. NRCS does not charge fees for services while DWQ oversight fees are \$70 per hour for design review and approval, construction permit preparation, and construction inspections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Based on cost evaluation and analysis by the agricultural stakeholder best available technology work group, there may be small additional costs for a producer if a synthetic liner is required instead of a clay liner. However, on the other hand, if a suitable onsite clay source is not available, the costs of importing clay will be higher than the cost and installation of a synthetic liner. Therefore, the costs of installing a clay liner versus a synthetic liner are comparable and should not represent a significant compliance cost for the permit applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will provide a fiscal benefit to small agricultural producers by empowering NRCS to provide conservation assistance for animal waste lagoons and runoff ponds instead of fee-based permitting and technical oversight by DWQ. In addition, research by the stakeholder work group demonstrated that the costs are comparable for constructing either a clay or synthetic liner. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY  
 WATER QUALITY  
 CANNON HEALTH BLDG  
 288 N 1460 W  
 SALT LAKE CITY UT 84116-3231, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 01/19/2007

AUTHORIZED BY: Walter Baker, Director

**R317. Environmental Quality, Water Quality.  
 R317-6. Ground Water Quality Protection.  
 R317-6-6. Implementation.**

**6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT**

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

C. No person may construct, install, or operate any new liquid waste storage facility or modify an existing or new liquid waste storage facility for a large animal feeding operation not permitted by rule under R317-6-6.2A.17, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed and the

applicant must comply with the requirements of R317-1-2 for submitting plans and specifications and obtaining a construction permit.

.....

**KEY: water quality, ground water**  
**Date of Enactment or Last Substantive Amendment: [~~August 20, 2004~~2006**  
**Notice of Continuation: October 17, 2002**  
**Authorizing, and Implemented or Interpreted Law: 19-5**



Financial Institutions, Banks  
**R333-13**  
 Rule Designating Applicable Federal Law for Banks Subject to the Jurisdiction of the Department of Financial Institutions

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE No.: 29172  
 FILED: 10/30/2006, 16:50

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the passage of S.B. 162, during the 2006 General Session of the Utah Legislature, the department shall by rule "... designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department." (DAR NOTE: S.B. 162 (2006) is found at Chapter 165, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: The proposed new rule designates which one or more federal laws are applicable to a bank subject to the jurisdiction of the department. The new rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-1-325

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No impact on the state budget as compliance to the rule affects the banks not the department.
- ❖ LOCAL GOVERNMENTS: Local governments are not involved in the regulation of banks and are therefore, not subject to this rule.
- ❖ OTHER PERSONS: State-chartered banks are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: State-chartered banks are currently required to comply with the designated

federal law and compliance to the rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: State-chartered banks are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact. G. Edward Leary, Commissioner

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

FINANCIAL INSTITUTIONS  
BANKS  
Room 201  
324 S STATE ST  
SALT LAKE CITY UT 84111-2393, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Paul Allred at the above address, by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at PALLRED@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Edward Leary, Commissioner

### **R333. Financial Institutions, Banks.**

#### **R333-13. Rule Designating Applicable Federal Law for Banks Subject to the Jurisdiction of the Department of Financial Institutions.**

##### **R333-13-1. Authority, Scope and Purpose.**

- (1) This rule is issued pursuant to Section 7-1-325.
- (2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.
- (3) This rule designates which one or more federal laws the department may enforce and are applicable to banks subject to the jurisdiction of the department.

##### **R333-13-2. Definitions.**

- (1) "Department" means the Department of Financial Institutions.
- (2) "Federal Law" means:
- (a) a statute passed by the Congress of the United States; or
- (b) a final regulation:
- (i) adopted by an administrative agency of the United States government; and
- (ii) published in the code of federal regulations or the federal register.

##### **R333-13-3. Applicable Federal Law.**

In accordance with Section 7-1-325, the following federal laws are applicable to banks subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;

(4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;

(5) Federal Deposit Insurance Corporation Improvement Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1831o, and its implementing federal regulations;

(6) Federal Reserve Act, 12 U.S.C. Sec. 371c through 371c-1 ("Banking affiliates"), made applicable to state nonmember insured institutions through 12 U.S.C. Sec. 1828(j)(i), and its implementing federal regulations;

(7) Federal Reserve Act, 12 U.S.C. Sec. 375a ("Loans to executive officers of banks"), made applicable to state nonmember institutions through 12 U.S.C. Sec. 1828(j)(2), and its implementing federal regulations;

(8) Federal Deposit Insurance Corporation Improvement Act, ("Standards for safety and soundness"), 12 U.S.C. Sec. 1831p-1, and its implementing federal regulations;

(9) Federal Deposit Insurance Corporation Improvement Act, ("Real estate lending standards"), 12 U.S.C. Sec. 1828(o), and its implementing federal regulations;

(10) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(11) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(12) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;

(13) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;

(14) Community Reinvestment Act, 12 U.S.C. Sec. 2901 et seq., and its implementing federal regulations.

**KEY: financial institutions, federal law**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 7-1-325(2)**

◆ ————— ◆

Financial Institutions, Credit Unions

## **R337-10**

Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions

### **NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 29173

FILED: 10/30/2006, 16:50

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the passage of S.B. 162, during the 2006 General Session of the Utah Legislature, the department shall by rule ". . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department." (DAR NOTE: S.B. 162 (2006) is found at Chapter 165, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: The proposed new rule designates which one or more federal laws are applicable to a credit union subject to the jurisdiction of the department. The new rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-1-325

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No impact on the state budget as compliance to the rule affects the credit unions not the department.
- ❖ LOCAL GOVERNMENTS: Local governments are not involved in the regulation of credit unions and are therefore, not subject to this rule.
- ❖ OTHER PERSONS: State-chartered credit unions are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: State-chartered credit unions are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: State-chartered credit unions are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact. G. Edward Leary, Commissioner

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

FINANCIAL INSTITUTIONS  
CREDIT UNIONS  
Room 201  
324 S STATE ST  
SALT LAKE CITY UT 84111-2393, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Paul Allred at the above address, by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at PALLRED@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Edward Leary, Commissioner

**R337. Financial Institutions, Credit Unions.****R337-10. Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions.****R333-13-1. Authority, Scope and Purpose.**

- (1) This rule is issued pursuant to Section 7-1-325.
- (2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.
- (3) This rule designates which one or more federal laws the department may enforce and are applicable to credit unions subject to the jurisdiction of the department.

**R333-13-2. Definitions.**

- (1) "Department" means the Department of Financial Institutions.
- (2) "Federal Law" means:
  - (a) a statute passed by the Congress of the United States; or
  - (b) a final regulation:
    - (i) adopted by an administrative agency of the United States government; and
    - (ii) published in the code of federal regulations or the federal register.

**R333-13-3. Applicable Federal Law.**

In accordance with Section 7-1-325, the following federal laws are applicable to credit unions subject to the jurisdiction of the department:

- (1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;
- (2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;
- (3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;
- (4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;
- (5) Federal Credit Union Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1790d, and its implementing federal regulations;
- (6) Federal Credit Union Act, 12 U.S.C. Sec. 1757(5) ("Loans and lines of credit to officials"), and its implementing federal regulations;
- (7) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;
- (8) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;
- (9) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;
- (10) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;



**KEY: financial institutions, federal law****Date of Enactment or Last Substantive Amendment: 2006****Authorizing, and Implemented or Interpreted Law: 7-1-325(2)**

Financial Institutions, Industrial Loan  
Corporations  
**R339-12**

Rule Designating Applicable Federal  
Law for Industrial Loan Corporations  
Subject to the Jurisdiction of the  
Department of Financial Institutions

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 29171

FILED: 10/30/2006, 16:49

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the passage of S.B. 162, during the 2006 General Session of the Utah Legislature, the department shall by rule ". . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department." (DAR NOTE: S.B. 162 (2006) is found at Chapter 165, Laws of Utah 2006, and was effective 05/01/2006.)

SUMMARY OF THE RULE OR CHANGE: The proposed new rule designates which one or more federal laws are applicable to an industrial loan corporation subject to the jurisdiction of the department. The new rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-1-325

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No impact on the state budget as compliance to the rule affects the industrial loan corporations not the department.
- ❖ LOCAL GOVERNMENTS: Local governments are not involved in the regulation of industrial loan corporations and are therefore, not subject to this rule.
- ❖ OTHER PERSONS: State-chartered industrial loan corporations are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: State-chartered industrial loan corporations are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: State-chartered industrial loan corporations are currently required to comply with the designated federal law and compliance to the rule should have minimal budgetary impact. G. Edward Leary, Commissioner

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

FINANCIAL INSTITUTIONS  
INDUSTRIAL LOAN CORPORATIONS  
Room 201  
324 S STATE ST  
SALT LAKE CITY UT 84111-2393, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Paul Allred at the above address, by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at [PALLRED@utah.gov](mailto:PALLRED@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Edward Leary, Commissioner

**R339. Financial Institutions, Industrial Loan Corporations.**  
**R339-12. Rule Designating Applicable Federal Law for Industrial Loan Corporations Subject to the Jurisdiction of the Department of Financial Institutions.**

**R339-12-1. Authority, Scope and Purpose.**

- (1) This rule is issued pursuant to Section 7-1-325.
- (2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325.
- (3) This rule designates which one or more federal laws the department may enforce and are applicable to industrial loan corporations subject to the jurisdiction of the department.

**R339-12-2. Definitions.**

- (1) "Department" means the Department of Financial Institutions.
- (2) "Federal Law" means:
  - (a) a statute passed by the Congress of the United States; or
  - (b) a final regulation:
    - (i) adopted by an administrative agency of the United States government; and
    - (ii) published in the code of federal regulations or the federal register.

**R339-12-3. Applicable Federal Law.**

In accordance with Section 7-1-325, the following federal laws are applicable to industrial loan corporations subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Truth in Savings Act, 12 U.S.C. Sec. 4301 et seq., and its implementing federal regulations;

(4) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing federal regulations;

(5) Federal Deposit Insurance Corporation Improvement Act ("Prompt Corrective Action"), 12 U.S.C. Sec. 1831o, and its implementing federal regulations;

(6) Federal Reserve Act, 12 U.S.C. Sec. 371c through 371c-1 ("Banking affiliates"), made applicable to state nonmember insured institutions through 12 U.S.C. Sec. 1828(j)(i), and its implementing federal regulations;

(7) Federal Reserve Act, 12 U.S.C. Sec. 375a ("Loans to executive officers of banks"), made applicable to state nonmember institutions through 12 U.S.C. Sec. 1828(j)(2), and its implementing federal regulations;

(8) Federal Deposit Insurance Corporation Improvement Act, ("Standards for safety and soundness"), 12 U.S.C. Sec. 1831p-1, and its implementing federal regulations;

(9) Federal Deposit Insurance Corporation Improvement Act, ("Real estate lending standards"), 12 U.S.C. Sec. 1828(o), and its implementing federal regulations;

(10) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(11) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(12) Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., and its implementing federal regulations;

(13) Electronic Fund Transfers Act, 15 U.S.C. Sec. 1693 et seq., and its implementing federal regulations;

(14) Community Reinvestment Act, 12 U.S.C. Sec. 2901 et seq., and its implementing federal regulations.

**KEY: financial institutions, federal law**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 7-1-325(2)**



**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-10-5  
Service Coverage**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29152

FILED: 10/24/2006, 11:37

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking corrects a cross-reference.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-10-5(19)(g), the cross reference for nutrient provision is corrected.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no cost to the state budget because this is a simple cross reference correction.
- ❖ LOCAL GOVERNMENTS: There is no cost to local government because this is a simple cross reference correction.
- ❖ OTHER PERSONS: There is no cost to other persons because this is a simple cross reference correction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this is a simple cross reference correction.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule updates a cross reference and should have no fiscal impact on business. 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](mailto: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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

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

**R414-10. Physician Services.**

**R414-10-5. Service Coverage.**

(1) Physician services involve direct patient care and securing and supervising appropriate diagnostic ancillary tests or services in order to diagnose the existence, nature, or extent of illness, injury, or disability. In addition, physician services involve establishing a course of medically necessary treatment designed to prevent or minimize the adverse effects of human disease, pain, illness, injury, infirmity, deformity, or other impairments to a client's physical or mental health.

.....

(19) Medications:

(a) Drugs and biologicals are limited to those approved by the Food and Drug Administration (FDA), or those approved by the Drug Utilization Review Board (DUR) for off-label use, which is use for a condition different from that initially intended for the drug or biological. Medicaid coverage of drugs and biologicals is based on individual need and orders written by a physician when the drug is given in accordance with accepted standards of medical practice and within the protocol of accepted use for the drug.

(i) Generic drugs shall be used whenever a generic product approved by the FDA is available. If the physician determines that a brand name drug is medically necessary, the physician may override the generic requirement by writing on the prescription in his own hand writing "name brand medically necessary". Preprinted messages, abbreviations, or notations by a second party, do not meet the override requirement. The pharmacist shall fill the prescription with the generic equivalent product if the override procedure is not followed.

(ii) Injectable medications approved in HCPCS are identified in the "J" code list published by the Health Care Financing Administration or the Department, or both. The list is reviewed and revised yearly and maintained in the Physician Provider Manual by notification and update through Medicaid Provider Bulletins.

(iii) The "J" code covers only the cost of an approved product.

(iv) Office visits only for administration of medication are excluded from coverage. However, an injection code which covers the cost of the syringe, needle and administration of the medication may be used with the "J" code when medication administration is the only reason for an office call.

(v) When an office service is provided for other purposes, in addition to medication administration, only the office visit and a "J" code may be used to bill for the service provided.

(vi) The office visit code and injection code may never be used together. Only one of the codes may be used to define the service provided.

(vii) Vitamin B-12 is limited to use only in treating conditions where physiological mechanisms produce pernicious anemia. Use of Vitamin B-12 in treating any unrelated condition is excluded from coverage.

(b) Vitamins may be provided only for:

(i) Pregnant women: Prenatal vitamins with 1 mg folic acid.

(ii) Children through age five: Children's vitamins with fluoride.

(iii) Children through age one: multiple vitamin (A, C, and D) without fluoride.

(iv) Children through age 15: Fluoride supplement.

(c) Human growth stimulating hormones are limited to CHEC eligible children under the age of 15 who meet the established internal criteria for coverage that has been published and is available in the Provider Manual.

(d) Methylphenidates, amphetamines, and other central nervous system stimulants require prior authorization and may be provided only for treatment of Attention Deficit Disorder (ADD).

(e) Medications for appetite suppression are not a covered service.

(f) Non-prescription, over-the-counter items are limited, and notification of changes consistent with this rule is made by Provider Bulletin and Provider Manual updates.

(g) Nutrients may be provided only as established in [R414-24A]R414-71-6.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: [2003]2006**

**Notice of Continuation: March 8, 2002**

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



## Health, Health Care Financing, Coverage and Reimbursement Policy

# R414-61-2

## Incorporation by Reference

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29148

FILED: 10/23/2006, 16:19

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Centers for Medicare and Medicaid Services requires the Division of Health Care Financing (DHCF) to convert its Long-Term Care (LTC) Managed Care program to a 1915(c) home and community-based services waiver. DHCF therefore implements by rule the New Choices Waiver that allows LTC managed care to operate under the proper waiver authority.

**SUMMARY OF THE RULE OR CHANGE:** This rule incorporates by reference the New Choices Waiver that provides services to individuals who meet Medicaid eligibility criteria, nursing facility level of care criteria, and special targeting criteria. Waiver services include case management, homemaker services, adult day care, habilitation services, respite care, adult residential services, attendant care services, caregiver training, chore services, environmental accessibility adaptations, home delivered meals, institutional transition services, medication assistance services, personal emergency response system, specialized medical equipment and supplies, non-medical transportation, personal budget assistance, assistive technology devices, specialized behavioral health services, home health aide services, consumer preparation services, and financial management services.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 26-18-3 and 26-1-5

**THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:** New Choices Waiver, effective January 1, 2007

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There is no budget impact because this amendment only transfers existing LTC managed care funds to the New Choices Waiver.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because no local funds are used to provide home and community-based services and local governments are not LTC providers.

❖ **OTHER PERSONS:** There is no budget impact because this amendment only transfers existing LTC managed care funds to the New Choices Waiver.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this amendment only transfers existing LTC managed care funds to the New Choices Waiver.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change incorporates by reference the New Choices Waiver that allows LTC managed care to operate under the proper waiver authority. This is a requirement of federal law. 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:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

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

##### **R414-61. Home and Community Based Waivers.**

##### **R414-61-2. Incorporation by Reference.**

The Department adopts the document entitled "Utah State Plan under Title XIX of the Social Security Act" 1999 edition, and the document entitled "Home and Community Based Waiver Implementation Plan", 1999 edition, which are incorporated by reference within this rule. These documents are available for public inspection during normal working hours, at the State Health Department Building, located at 288 North, 1460 West, Salt Lake City, UT, 84114-3102, at the office of the Division of Health Care Financing. These documents will be used by the Division for the provision of services under the following waivers:

- (1) Waiver for Technology Dependent/Medically Fragile Individuals, dated July 1, 2003;
- (2) Waiver for Individuals Age 65 and Older, dated July 1, 2004;
- (3) Waiver for Individuals with Acquired Brain Injuries, dated July 1, 2004;
- (4) Waiver for Individuals with Physical Disabilities, dated July 1, 2003;

(5) Waiver for Individuals with Developmental Disabilities or Mental Retardation, dated July 1, 2003;

(6) New Choices Waiver, Effective January 1, 2007.

**KEY: Medicaid**

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

**Notice of Continuation:** March 11, 2005

**Authorizing, and Implemented or Interpreted Law:** 26-18-3



## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-307**

#### Eligibility for Home and Community- Based Services Waivers

##### **NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 29174

FILED: 10/31/2006, 08:23

##### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is necessary to outline general eligibility requirements for home and community-based services waivers. It also specifies New Choices Waiver eligibility criteria.

**SUMMARY OF THE RULE OR CHANGE:** This proposed new rule outlines general eligibility requirements for home and community-based services waivers, specifies requirements that apply to individuals who qualify for a waiver under the special income group, specifies requirements that apply to individuals who qualify for a waiver under the medically needy waiver group, describes New Choices Waiver eligibility criteria, and states other provisions that apply to all applicants and recipients of home and community-based services waivers.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 26-1-5 and 26-18-3, and 42 CFR 435.217 and 435.726

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** There is no budget impact because this rule only specifies eligibility criteria for home and community-based services waivers.
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not provide home and community-based services.
- ❖ **OTHER PERSONS:** There is no budget impact because this rule only specifies eligibility criteria for home and community-based services waivers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this rule only specifies eligibility criteria for home and community-based services waivers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule outlines eligibility criteria for home and community-based services and the New Choices Waiver. There should be no fiscal impact on business. 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:

Craig Devashrayee or Gayle M. Six at the above address, by phone at 801-538-6641 or 801-538-6895, by FAX at 801-538-6099 or 801-538-6952, or by Internet E-mail at cdevashrayee@utah.gov or gaylesix@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

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

**R414-307. Eligibility for Home and Community-Based Services Waivers.**

**R414-307-1. Introduction and Authority.**

Section 26-18-3 authorizes this rule. It establishes general eligibility requirements for home and community based service waivers. It also specifies eligibility criteria that applies to the New Choices Home and the Community-Based Services Waiver.

**R414-307-2. Definitions.**

The definitions found in R414-301 apply to this rule.

**R414-307-3. General Requirements for Home and Community-Based Services Waivers.**

(1) To qualify under a home and community based services waiver, an individual must meet:

(a) the medical eligibility criteria defined in the waiver implementation plan adopted in R414-61 applicable to the specific waiver under which the individual is seeking services, as verified by the referring agency case manager;

(b) the eligibility criteria for one of the Medicaid coverage groups selected for coverage in the specific waiver implementation plan under which the individual is seeking services; and

(c) the non-financial Medicaid criteria defined in R414-302.

(2) An individual must apply for and provide required verifications pursuant to R414-308 relating to the application and verification process.

**R414-307-4. Special Income Group.**

The following requirements apply to individuals who qualify for a Medicaid home and community-based services waiver under the special income group defined in 42 CFR 435.217 because they do not meet community Medicaid rules but would be eligible for Medicaid if they were living in a medical institution:

(1) If the individual's spouse meets the definition of a community spouse, the Department applies the income and resource provisions defined in Section 1924 of the Social Security Act and R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the Department counts only the individual's resources to determine eligibility. If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the Department counts one-half of jointly-held assets as available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The Department counts only income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The Department does not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the Department does not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group. The Department counts actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The Department applies the transfer of asset provisions of Section 1917 of the Social Security Act, as amended by Pub. L. 109-171.

(7) The individual's cost-of-care contribution is the income amount remaining after post-eligibility deductions for the applicable waiver. The individual must pay the cost-of-care contribution to the department for Medicaid waiver eligibility.

(8) The Department deducts medical expenses incurred by the individual in accordance with R414-304-9.

(9) The Department determines special income group eligibility for an individual starting the month that waiver services begin. The Department determines eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

**R414-307-5. Medically Needy Waiver Group.**

The following requirements apply to individuals who meet the eligibility criteria for a medically needy coverage group defined in 42 CFR 435.301 that the Department has selected for coverage under the implementation plan for the specific waiver:

(1) If an individual's spouse meets the definition of a community spouse, the Department applies the income and resource provisions defined in Section 1924 of the Social Security Act and R414-305-3.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the Department counts only the individual's resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the Department counts one-half of

jointly-held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The Department counts only income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The Department does not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the Department does not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The Department counts actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The Department applies the income deductions allowed by the non-institutional Medicaid category under which the individual qualifies. The Department compares countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown. The individual must pay the spenddown to the Department for Medicaid waiver eligibility.

(7) The Department deducts medical expenses incurred by the individual in accordance with R414-304-9.

(8) The Department determines medically needy group eligibility for an individual starting the month that waiver services begin. The Department determines eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

#### **R414-307-6. New Choices Waiver Eligibility Criteria.**

The following eligibility requirements apply to the New Choices Waiver:

(1) An individual must be age 65 or older, or age 21 through age 64 and disabled as defined in Section 1614(a)(3) of the Social Security Act. For the purpose of this waiver, an individual is 21 years of age beginning the first month after the month of the individual's 21st birthday.

(2) Under post-eligibility income rules defined in Section 1924 of the Social Security Act for individuals with a community spouse, and in 42 CFR 435.726 for individuals without a community spouse, the Department deducts the following amounts from the income of an individual who meets the eligibility criteria for the special income group:

(a) A personal needs allowance equal to 100% of the federal poverty guideline for a household of one.

(b) For individuals with earned income, up to \$125 of gross-earned income.

(c) Actual monthly shelter costs not to exceed \$300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses.

(d) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Section 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly.

(e) An allowance for a community spouse and dependent family members living with the community spouse, in accordance with the provisions of Section 1924 of the Social Security Act.

(f) In the case of an individual who does not have a community spouse or whose spouse is also eligible for waiver services, an allowance for dependent family members is equal to one-third of the

difference between the minimum monthly spousal needs allowance and the family member's monthly income. If more than one individual contributes income to the dependent family member, the combined income deductions cannot exceed one-third of the difference.

(g) Medical and remedial care expenses incurred by the individual in accordance with R414-304-9.

#### **R414-307-7. Other Provisions.**

The following provisions apply to all applicants and recipients of home and community based-services waivers:

(1) Applicants and recipients of home and community-based services waivers receive the same rights and have the same responsibilities as all other medical assistance applicants and recipients.

(2) For individuals claiming a disability, the disability provisions of R414-303 apply.

(3) Except where otherwise stated in this rule, the income provisions of R414-304 apply to waiver applicants and recipients.

(4) Except where otherwise stated in this rule, the resource provisions of R414-305 apply to waiver applicants and recipients.

(5) The benefit provisions of R414-306 apply to waiver applicants and recipients.

(6) The provisions found in R414-308 that apply to eligibility determinations, redeterminations, change reporting, and improper medical assistance also apply to waiver applicants and recipients.

(7) The Department limits the number of individuals covered by a home and community based-services waiver as provided in the adopted waiver implementation plan.

(8) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by Pub. L. 109-171.

(a) The state sets that limit at the minimum level allowed under Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver services.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group. This is in accordance with institutional deeming rules found in Section 1924 of the Social Security Act.

#### **KEY: eligibility, waivers, special income group**

**Date of Enactment or Last Substantive Amendment: 2006**

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



Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-507**  
Medicaid Long Term Care Managed  
Care

**NOTICE OF PROPOSED RULE**

(Repeal)  
 DAR FILE No.: 29149  
 FILED: 10/23/2006, 16:41

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Centers for Medicare and Medicaid Services requires the Division of Health Care Financing (DHCF) to convert its Long-Term Care (LTC) Managed Care program to a 1915(c) home and community-based services waiver. DHCF therefore, repeals Rule R414-507 which implemented the LTC Managed Care program. This repealed rule states the purpose of the LTC Managed Care program and outlines its contractual authority, client eligibility requirements, program access requirements, service coverage, freedom of choice provisions, nursing facility level of care criteria, reimbursement for services, cost neutrality provisions, and criteria for new projects and project expansion proposals. In addition to the repeal of this rule, DHCF also implements the New Choices Waiver in Rule R414-61 that allows LTC managed care to operate under proper waiver authority. (DAR NOTE: The proposed new Rule R414-61 is under DAR No. 29148 in this issue, November 15, 2006, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. The replacement program under the 1915(c) home and community-based services waiver is implemented in a separate, companion rule filing (see the proposed filing for Rule R414-61).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no budget impact because the repeal of this rule only transfers existing LTC managed care funds to the New Choices Waiver.
- ❖ LOCAL GOVERNMENTS: There is no budget impact because no local funds are used to provide LTC managed care and local governments are not LTC providers.
- ❖ OTHER PERSONS: There is no budget impact because the repeal of this rule only transfers existing LTC managed care funds to the New Choices Waiver.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the repeal of this rule only transfers existing LTC managed care funds to the New Choices Waiver.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule repeal is necessary to stay in compliance with federal law. 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:  
 Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2006

AUTHORIZED BY: David N. Sundwall, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****~~R414-507. Medicaid Long Term Care Managed Care. R414-507-1. Introduction and Authority.~~**

~~—(1) The Medicaid LTC Managed Care program is designed to enable an adult Medicaid recipient who needs a level of care consistent with the need for services provided in a nursing facility to receive an individualized package of services to maintain health and safety in a variety of appropriate service settings.~~

~~—(2) This rule is authorized by Utah Code Section 26-18-3. This program is authorized by 42 USC 1396n(a) and is a component of the Utah Medicaid State Plan. As provided in 42 USC 1396n(a), the state is not out of compliance with the requirements of paragraphs (1), (10) or (23) of 42 USC 1396a solely because the state has entered into a contract with an organization that has agreed to provide care and services in addition to those offered under the State Plan to individuals eligible for medical assistance. The Department may enter into one or more contracts with Medicaid managed care organizations for the operation of projects under the LTC Managed Care program.~~

**~~R414-507-2. Definitions.~~**

~~The definitions in R414-1 apply to this rule. In addition:~~

~~—(1) "Care Coordination" is a process where representatives of Medicaid programs serving an individual, and the individual's attending physician when possible, participate in the exchange of information and service planning to assure that the individual's health and welfare needs are identified, develop a comprehensive service plan, and implement the service plan to achieve integration of care across programs.~~

~~—(2) "Long Term Care" (LTC) means a comprehensive array of services provided to persons of all ages who are experiencing chronic functional limitations due to illness, disability or injury.~~

~~—(3) "LTC Managed Care Project Contractor" is a Medicaid Primary Inpatient Health Plan or a Medicaid Prepaid Mental Health Plan that has contracted with the Medicaid agency to provide a long term care service package as part of its array of covered services.~~

~~—(4) "Minimum Data Set HOME CARE (MDS HC)" is a trademark standardized assessment instrument developed by the nonprofit consortium known as InterRAI.~~

**~~R414-507-3. Client Eligibility Requirements.~~**

~~—(1) Participation in the LTC Managed Care program is limited to individuals who:~~

—(a) have been in a medical institution for at least 30 consecutive days as a Medicare or Medicaid patient; or

—(b) have been in a Medicaid 1915(c) Home and Community-Based Services waiver for at least 30 consecutive days.

—(2) A client must meet all financial eligibility requirements for institutional care.

—(3) Consistent with the provisions of 42 USC 1396n(a), individuals enrolled in the LTC Managed Care program remain eligible under 42 USC 1396a(10)(A), regardless of the setting in which the services of the program are delivered.

#### **R414-507-4. Program Access Requirements.**

—(1) Participation in the LTC Managed Care program is limited to Medicaid recipients who:

—(a) require the level of care provided in a nursing facility as determined under in R414-502 of the Utah Administrative Code;

—(b) are age 18 or older; and

—(c)(i) reside in a Medicaid-certified nursing facility on an extended-stay basis;

—(ii) are on an inpatient status in a licensed Utah medical institution other than a Medicaid-certified nursing facility and have been designated by the attending physician for discharge to a nursing facility for an extended stay of 30 days or more; or

—(iii) are enrolled in a Medicaid 1915c Home and Community-Based Services waiver as an alternative to nursing facility placement and have been determined by the state to require disenrollment from the 1915c Home and Community-Based Services waiver due to health and welfare concerns.

—(2) In the case of acute care hospitals, specialty hospitals, and Medicare skilled-nursing facilities, participation is limited to persons who are admitted for the purpose of receiving a medical, non-psychiatric level of care more acute than the Medicaid nursing facility level of care provided in R414-502.

—(3) Persons who meet the intensive skilled level of care as provided in R414-502 are not eligible for participation in the LTC Managed Care program.

—(4) Persons who meet the level of care criteria for admission to an Intermediate Care Facility for the Mentally Retarded as provided in R414-502 are not eligible for participation in the LTC Managed Care program.

—(5) Residents of a nursing facility who have selected the Medicare or Medicaid hospice benefit are eligible to participate in the LTC Managed Care program only if enrollment in the LTC Managed Care program results in the individual's receiving continued hospice care in his or her own home or the home of a family member or personal caregiver.

#### **R414-507-5. Service Coverage.**

—(1) An enrollee in the LTC Managed Care program receives medical, mental health, and institutional and home and community-based LTC services to address the individual's health and safety needs.

—(2) The LTC Managed Care program provides the Medicaid State Plan nursing facility service, care coordination, and home and community-based long term care services.

—(3) The LTC Managed Care Project Contractor must:

—(i) use the InterRAI Minimum Data Set HOME CARE assessment instrument and other clinical assessments necessary to identify the individual's needs;

—(ii) develop, in consultation with the individual and the individual's attending physician when possible, a comprehensive written service plan that:

—(A) addresses identified needs in an appropriate setting;

—(B) coordinates LTC Managed Care program benefits between all service providers; and

—(iii) assure implementation of the comprehensive written service plan.

—(4) The LTC Managed Care Project Contractor may not pay for LTC services provided by persons who otherwise have a legal responsibility for providing the care, such as a spouse or legally appointed guardian.

—(5) A resident of a nursing facility who is admitted from a home or community setting is not eligible for the LTC Managed Care program until a 90-day continuous stay has been completed in a Utah nursing facility or a Utah Medicaid-enrolled nursing facility in an adjoining state.

—(6) A participant in a Medicaid 1915c Home and Community-Based Services Waiver who is eligible for the LTC Managed Care program in accordance with R414-507-4(1)(e) may enroll in the LTC Managed care program without completing a stay in a Utah nursing facility if the state determines the LTC Managed care program can meet the health and safety needs of the individual in a community setting at the time of enrollment.

—(7) An individual residing in a Medicare skilled unit is not eligible to enroll in the LTC Managed Care program until the full available Medicare Part A benefit for skilled nursing care is exhausted.

—(8) An individual enrolled in the LTC Managed Care program must exhaust all available Medicare Part B benefits and other third party benefits before utilizing comparable services through the LTC Managed care program.

#### **R414-507-6. Freedom of Choice.**

—(1) Upon enrollment in the LTC Managed Care program, the individual may choose among the LTC Managed Care Project Contractors serving in the individual's desired service area.

—(2) Upon selecting the LTC Managed Care Project Contractor, the individual is bound by the requirements of the LTC Managed Care program and the Department-approved policies and procedures adopted by the LTC Managed Care Project Contractor for operation of the program.

—(3) A LTC Managed Care program enrollee may disenroll from the program at any time with or without cause. A voluntary disenrollment is effective when the enrollee has notified the Department and the Department issues a new Medicaid card that indicates disenrollment on the eligibility transmission.

—(4) An enrollee of the LTC Managed Care program who desires to change LTC Managed Care Project Contractors is subject to the provisions of R414-140.

#### **R414-507-7. Evaluation and Reevaluation of Nursing Facility Level of Care.**

—The Department Director, or designee, may initially evaluate, or periodically reevaluate at least annually each LTC Managed Care enrollee to determine whether the individual meets the admission criteria of R414-502.

#### **R414-507-8. Reimbursement for Services.**

—(1) Each LTC Managed Care Project Contractor receives a monthly pre-payment per enrollee in an amount established by the Department at the beginning of each state fiscal year.

—(2) The LTC Managed Care Project Contractor must submit a financial report on a Department approved form for the fiscal year



reporting period, in accordance with the particular project contract requirements.

— (3) After the conclusion of each fiscal year, the Department conducts a cost settlement with each LTC Managed Care Project Contractor. To conduct the cost settlement, the Department first reviews LTC Managed Care Project Contractor expense records and documentation to determine the amount of allowable program expenses. The Department then compares the allowable program expense amount with the aggregate amount of the prepayments the Department paid the LTC Managed Care Project Contractor during the prior fiscal year. The Department also calculates any financial incentives for which the LTC Managed Care Project Contractor qualifies. Based on these calculations, the Department determines an amount due to or owed by the LTC Managed Care Project Contractor.

**R414-507-9. Cost Neutrality.**

— (1) Cost effectiveness of the LTC Managed Care program is measured as an aggregate of all enrollees over time. The Department's total expenditures for the LTC Managed Care program and other Medicaid services provided to individuals enrolled in the LTC Managed Care program, shall in any given year, not exceed the amount that would be incurred by the Medicaid program for a comparable population in a nursing facility.

— (2) The LTC Project Contractor must meet each enrollee's assessed needs regardless of the individual's cost or complexity of care. The LTC Project Contractor cannot place an expenditure cap on any enrollee.

**R414-507-10. New Project and Project Expansion Proposals.**

— (1) Organizations interested in partnering with the Department of Health in a new LTC Managed Care project or to expand the geographical area served by an existing LTC Managed Care project must submit a written project proposal demonstrating the feasibility of the project for consideration by the Department.

— (2) The written project proposal must include as a minimum the following topics to demonstrate the added value that the project will contribute to the LTC Managed Care program and the long term viability of the project for the specific geographical area to be served:

- (a) project purpose, goals and objectives;
- (b) project organizational structure;
- (c) a description of services and supports to be provided and the general sequence in which the various elements of the long term care array will be developed;
- (d) a description of the residential and work settings where services will be delivered;
- (e) a description of the geographical area to be covered;
- (f) a project development and implementation schedule;
- (g) project quarterly growth projections and estimated maximum capacity;
- (h) a description of the target populations;
- (i) a description of the referral network to be accessed to identify potential project participants and the outreach approaches to be utilized to educate the referral network about the project;
- (j) a description of the specific performance indicators to guide the progress of the project and to measure the level of achievement of stated goals and objectives;
- (k) a description of long term care best practices incorporated into the project, that includes a self directed approach to service planning and budgeting for enrollees who have the ability to be actively involved in their health care decisions;
- (l) a financial pro forma statement for the project; and

— (m) a description of other publicly financed programs that the project contractor or partners are involved with that present opportunities to integrate multiple program activities and strengthen common priorities or that pose potential conflicting priorities between programs and how the contributing and conflicting issues will be managed.

— (3) Each proposal must include sufficient information to allow the Department to evaluate the project's ability to operate in accordance with R414-507, to protect the health and safety of persons served through an alternative delivery approach to nursing facility care, and to maintain financial stability.

— (4) The Department will issue a written notice authorizing or denying a proposed project within 90 days of receipt of the written proposal. If the Department issues a written request for additional information, the additional information must be submitted within 30 days of the date of the Department's request and the maximum review time frame is extended to 120 days.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: July 20, 2005**  
**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3]**



## Insurance, Administration

### R590-222

#### Viatical Settlements

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29167

FILED: 10/30/2006, 11:11

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to eliminate one report, to simplify another, to eliminate the definition of one word that is no longer used in the rule, and to clarify requirements.

SUMMARY OF THE RULE OR CHANGE: In Section R590-222-2, the reference to the producer annual report is removed. In Section R590-222-3, the requirement to file Utah Producer of Viatical Settlement Annual Report Appendix is removed; renumbered the subsequent subsections, and Appendixes D, E, and F are reclassified as Appendixes C, D, and E. In Section R590-222-4, the definition of "net death benefit" is being eliminated since the term has been eliminated from the text of the rule. Subsection R590-222-5(2)(b) has been eliminated since Title 31A, Chapter 23a, provides all the necessary guidelines. In Section R590-222-6, the provider report is being revised to only require the information necessary to determine if the amount paid is compliant with the code. The producer report is being deleted because the information is no longer needed. This section also clarifies that an annual report is not needed if no transactions occur within the state. A typo in Subsection R590-222-11(17)(a) is being corrected. The word "license" is being changed to "licensee."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-36-119, and Title 31A, Chapter 36

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The changes to this rule will reduce the department's workload by eliminating the requirement of licensees to file one report and by simplifying another. It is hoped that by simplifying the one report the department will receive fewer inquiries about it. The reduction in workload will not be enough to result in the reduction in workforce.
- ❖ LOCAL GOVERNMENTS: This rule affects the relationship between the department and its licensees and will not affect local governments.
- ❖ OTHER PERSONS: The elimination of the one report and simplification of the other will save the viatical licensee time but not enough to reduce their workforce. The simplification of the one report will result in the elimination of private and confidential information from the report and will allow the department to share this information with interested parties.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The elimination of the one report and simplification of the other will save the viatical licensee time but not enough to reduce their workforce. The simplification of the one report will result in the elimination of private and confidential information from the report and will allow the department to share this information with interested parties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on Utah businesses. D. Kent Michie, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Jilene Whitby, Information Specialist

## **R590. Insurance, Administration.**

### **R590-222. Viatical Settlements.**

#### **R590-222-2. Purpose and Scope.**

The purpose of this rule is to implement procedures for licensure of providers and producers of viatical settlements, provider ~~and producer~~ annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for viatical settlement payments, and procedures for requests for verification of coverage.

This rule applies to all providers and producers of viatical settlements and to insurers whose policies are being viaticated.

#### **R590-222-3. Incorporation by Reference.**

The following appendices are hereby incorporated by reference within this rule and are available at <http://www.insurance.utah.gov/ruleindex.html>:

(1) Appendix A, Utah Provider of Viatical Settlement Application, dated 2003.

(2) Appendix B, Utah Provider of Viatical Settlement Annual Report, dated 2003~~6~~.

(3) Appendix C, ~~Utah Producer of Viatical Settlement Annual Report, dated 2003.~~

~~(4) Appendix D,~~ NAIC Viatical Settlement brochure, dated 2002.

(5) Appendix ~~E~~~~D~~, NAIC Verification of Coverage for Individual Policies, dated 2003.

(6) Appendix ~~F~~~~E~~, NAIC Verification of Group Life Insurance Benefits, dated 2003.

#### **R590-222-4. Definitions.**

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for viatication.

(2) "Life expectancy" means the mean number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the provider of viatical settlements considering medical records and appropriate experiential data.

(3) ~~["Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.~~

~~(4)"]~~"Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

#### **R590-222-5. License Requirements.**

(1) Provider of Viatical Settlements License.

(a) A person may not perform, or advertise any service as a provider of viatical settlements in Utah, without a valid license.

(b) A provider of viatical settlements license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website, see Appendix A;

(ii) provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that viatical settlement proceeds will be sent to the viator within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) provide the antifraud plan as required by Section 31A-36-117;

(iv) provide any other information requested by the commissioner; and

(v) provide evidence of financial responsibility in the amount of \$50,000 in the form of a surety bond issued by an authorized corporate surety or a deposit of cash, certificates of deposit or securities or any combination thereof:

(A) The evidence of financial responsibility shall remain in force for as long as the license is active.

(B) The bond, deposit or combination thereof, shall not be terminated without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a financial instrument, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the provider of viatical settlements is licensed as a provider of viatical settlements.

(d) The commissioner may refuse to issue or renew a license of a provider of viatical settlements if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If a provider of viatical settlements fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a provider of viatical settlements has, at the time of license renewal, viatical settlements where the insured has not died, the provider of viatical settlements shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the provider of viatical settlements properly assigns, sells, or otherwise transfers the viatical settlements where the insured has not died; or

(B) the date that the last insured covered by viatical settlement transaction has died;

(ii) designate, in writing, either the provider of viatical settlements that entered into the viatical settlement or the producer who received commission from the viatical settlement, if applicable, or any other provider or producer of viatical settlements licensed in this state, to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident provider of viatical settlements unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Producer of Viatical Settlements license.

~~[(a)]~~ Producers of viatical settlements ~~[will]~~ shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

~~— (b) If a producer of viatical settlements fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:~~

~~— (i) result in lapse of the license; and~~

~~— (ii) subject the producer to administrative penalties and forfeitures.]~~

#### **R590-222-6. Annual Report[s].**

~~[(4)]~~ By March 1 of each calendar year, each provider of viatical settlements licensed in this state shall report to the commissioner all viatical settlement transactions where the viator is a resident of this state. A report is not required if there are no transactions to be reported. This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year:

~~[(a)]~~ 1) for viatical settlements contracted during the reporting period:

~~[(i)]~~ a) ~~[date of viatical settlement]~~ a coded identifier for each viatical settlement;

~~[(ii)]~~ b) ~~[life expectancy of the insured at time of settlement in months]~~ policy issue date;

~~[(iii)]~~ c) ~~[face amount of policy viaticated]~~ date of the viatical settlement;

~~[(iv)]~~ d) net death benefit viaticated;

~~[(v)]~~ e) ~~[estimated total premiums to keep policy in force for mean life expectancy]~~ amount available under the terms of the policy;

~~[(vi)]~~ f) net amount paid to viator;

~~— (vii) contestable or within suicide period, or both, at the time of viatical settlement; and~~

~~— (viii) name and address of the producer of the viatical settlement, if any, through whom the reporting provider purchased the policy.~~

~~— (b) for viatical settlements where death has occurred during the reporting period:~~

~~— (i) date of viatical settlement;~~

~~— (ii) life expectancy of the insured at time of settlement in months;~~

~~— (iii) net death benefit collected;~~

~~— (iv) total premiums paid to maintain the policy (indicate as dollar amount and provide reason for zero amount, i.e. waiver of premium, paid-up policy, etc.);~~

~~— (v) net amount paid to viator;~~

~~— (vi) date of death;~~

~~— (vii) amount of time between date of settlement and date of death in months;~~

~~— (viii) difference between the number of months that passed between the date of settlement and the date of death and the life expectancy in months as determined by the reporting company; and~~

~~— (ix) contestable or within suicide period, or both, at the time of viatical settlement.~~

~~]~~ ~~[(e)]~~ 2) number of policies reviewed and rejected; and

~~[(d)]~~ 3) number of policies purchased from an individual or entity other than the original viator as a percentage of total policies purchased.]

~~— (2) By March 1 of each calendar year, each producer of viatical settlements licensed in this state shall report to the commissioner all viatical settlement transactions where the viator is a resident of this~~

~~state. This report shall be submitted in the format in Appendix C and contain the following information for the previous calendar year:~~

- ~~— (a) date of viatical settlement;~~
- ~~— (b) face amount of policy viaticated;~~
- ~~— (c) net amount paid to viator;~~
- ~~— (d) contestable or within suicide period, or both, at the time of the viatical settlement;~~
- ~~— (e) provider's name and address for each transaction.]~~

#### **R590-222-8. Disclosures.**

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time the application for the viatical settlement, shall be provided in a separate document that is signed by the viator and the provider of viatical settlements or producer of viatical settlements, and shall contain the following information:

(a) There are possible alternatives to a viatical settlement, including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the viatical settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The viator has the right to terminate a viatical settlement within 15 calendar days after the receipt of the viatical settlement proceeds by the viator as provided by Subsection 31A-36-109(7). If the insured dies during the 15 day period, the settlement is terminated, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or purchaser.

(f) Funds will be sent to the viator within three business days after the provider of viatical settlements has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a viatical settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

(h) Disclosure to a viator shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) Viatical Settlement brochure, dated 2002, that describes the process of viatical settlements, see Appendix [D].

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a provider of viatical settlements or producer of viatical settlements about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the provider of viatical settlements. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) The insured may be contacted by either the provider or producer of viatical settlements or its authorized representative for the purpose of determining the insured's health status. This contact is

limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(2) A provider of viatical settlements shall provide the viator with at least the following disclosures no later than the date the viatical settlement is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement or in a separate document signed by the viator and the provider of viatical settlements or producer of viatical settlements, and provide the following information:

(a) State the affiliation, if any, between the provider of viatical settlements and the issuer of the insurance policy to be viaticated.

(b) The document shall include the name, address and telephone number of the provider of viatical settlements.

(c) A producer of viatical settlements shall disclose to a prospective viator the existence and source of the producer's compensation. The term "compensation" includes anything of value paid or given to a producer of viatical settlements for the placement of a policy.

(d) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

(e) State the dollar amount of the current death benefit payable to the provider of viatical settlements under the policy or certificate. If known, the provider of viatical settlements shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the provider of viatical settlements interest in those benefits.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

#### **R590-222-10. Requests for Verification of Coverage.**

(1) Insurers, authorized to do business in this state, whose policies are being viaticated, shall respond to a request for verification of coverage from a provider of viatical settlements or a producer of viatical settlements within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Individual Policies, dated 2003, which has been completed by the provider of viatical settlements or the producer of viatical settlements in accordance with the instructions on the form, see Appendix [E];

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Group Life Insurance Benefits dated 2003, which has been completed by the provider of viatical settlements or producer of viatical settlements in accordance with the instructions on the form, see Appendix [F]; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being viaticated may not charge a fee for responding to a request for information from a provider of viatical settlements or producer of viatical settlements in compliance with this rule in excess of any usual and customary charges to policyholders, certificateholders or insureds for similar services.

(3) The insurer whose policy is being viaticated shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificateholder and, where the policyholder or certificateholder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

**KEY: insurance, viatical**

**Date of Enactment or Last Substantive Amendment:** ~~June 24, 2003~~ **2006**

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-36-119

◆ ————— ◆

## Natural Resources, Parks and Recreation **R651-634-1** User Permits and Fees

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29163  
FILED: 10/26/2006, 08:02

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule section contains information for User Permits and Fees and the Nonresident Off-Highway Vehicles (OHV) users permits and their expiration date. Because these permits are purchased all year long, it is advantageous to the Division of Parks and Recreation and to the recreator to make the expiration date for the Permits take effect 12 months from the first day of the calendar month they are purchased in, rather than making them all expire December 31. That date makes it difficult since permits are purchased all year long and if purchased in October or November, the way it is written, they would have to renew it by December 31 of the same year.

**SUMMARY OF THE RULE OR CHANGE:** Written the new way, making the permit effective 12 months beginning with the first day of the calendar month a person may purchase it, the permit shall not expire until the last day of the same month in the following year.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 41-22-35 and 63-11-17

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be a positive impact to the state budget as it appears that the change will allow the State to better market the out-of-state passes, hence it is believed that more passes will be sold to the public. There is no way to estimate the increase in funds at this time since it has not been tried yet.

❖ **LOCAL GOVERNMENTS:** This rule change allows for a more friendly permit system that will encourage more nonresidents to visit Utah to participate in OHV-related activities. Most of those opportunities are located in the more rural parts of the state where the economic impact of out-of-state tourism dollars has the most beneficial impact. Under the current system, many visitors have cut their Christmas vacations short because their permits expired at the end of the year, indicating they would have stayed a couple of extra days, but having to purchase a new permit discouraged them from doing so.

❖ **OTHER PERSONS:** This change affects only out-of-state tourists visiting Utah. The permit will be valid for a full year, and it will be much more convenient. In the past holiday visitors have had their permit expire in mid-vacation. This inconvenience to them will go away with this change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons because this change only allows for a longer time to use permits and not have them expire at a difficult time, such as during a vacation.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have read and reviewed the above rule for the Division of State Parks and Recreation and approve it to be moved forward in the Rules Process. I find no fiscal impact on businesses. Michael Styler, Executive Director

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

NATURAL RESOURCES  
PARKS AND RECREATION  
Room 116  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at [deeguess@utah.gov](mailto:deeguess@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2007

AUTHORIZED BY: Mary Tullius, Director

**R651. Natural Resources, Parks and Recreation.****R651-634. Nonresident OHV User Permits and Fees.****R651-634-1. User Permits and Fees.**

Except as provided below, any nonresident owning an off-highway vehicle, who operates or gives another person permission to operate the off-highway vehicle on any public land, trail, street or highway in this state, shall pay an annual off-highway vehicle user fee

1. A decal will be issued which proves payment has been made.

The decal will then be displayed on the off-highway vehicle as follows: On snowmobiles, the decal shall be mounted on the left side of the hood, pan or tunnel. On motorcycles, the decal shall be mounted on the left fork, or on the left side body plastic. On all-terrain vehicles, the decal shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2 UCA. In all instances, the decal shall be mounted in a visible location. The decal shall be non-transferable.

2. A receipt will be issued with the decal indicating the fee paid, the Vehicle Identification Number (VIN) of the off-highway vehicle, and the off-highway vehicle owner's name and address. This receipt shall remain with the off-highway vehicle at all times.

3. Fees charged will be in accordance with S.B. 14 (1999 Utah Laws 1, effective July 1, 1999), and H.B. 51 (2004 Utah Laws, Chapter 314, effective July 1, 2004) which state that the off-highway vehicle user annual fee will be \$30 per year.

4. Nonresident OHV user permits shall ~~expire December 31, annually~~ continue in effect for a period of 12 months beginning with the first day of the calendar month of purchase, and shall not expire until the last day of the same month in the following year.

Applicants for a nonresident OHV user permit shall provide evidence that the applicant is the owner of the off-highway vehicle, and is not a resident of Utah. Such evidence shall include:

a. A government issued identification card showing the state of residency of the off-highway vehicle owner, and one of the following:

(1) A title or certificate of registration from a state other than Utah.

(2) An original bill of sale; or

b. A sworn affidavit stating that the off-highway vehicle is owned by a nonresident of the State of Utah. The affidavit must state the name and address of the vehicle owner, and a description of the off-highway vehicle, including the Vehicle Identification Number (VIN).

Off-highway vehicles currently registered in a state offering reciprocal operating privileges to Utah residents shall be exempt from the nonresident user fee requirements of this rule. The Division shall maintain a list of states offering reciprocal operating privileges to Utah residents. This list shall be updated at least annually.

Provisions of this rule shall not apply to off-highway vehicles exempt under 41-22-35(1)(b)(I), or to off-highway vehicles participating in scheduled competitive events sponsored by a public or private entity, or in noncompetitive events sponsored in whole or in part by any governmental entity.

**KEY: parks**

**Date of Enactment or Last Substantive Amendment:** ~~September 1, 2004~~ January 1, 2007

**Notice of Continuation:** July 1, 2005

**Authorizing, and Implemented or Interpreted Law:** 41-22-35; 63-11-17

◆ ————— ◆

## Natural Resources, Forestry, Fire and State Lands

# R652-122-300

### Minimum Standards for Wildland Fire Training

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29170

FILED: 10/30/2006, 15:58

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose for this amendment is to clarify a distinction between a firefighter who actually fights a wildland fire and one who has peripheral involvement such as a support function in the activities associated with the fire.

**SUMMARY OF THE RULE OR CHANGE:** The Legislative intent of H.B. 146 (2004 General Session) was to have a minimum standard of training for firefighters fighting wildland fires. The rule change clarifies that those support functions that may be assigned to a fire such as a transport driver, courier, tender drivers, and others need not adhere to the minimum standard that the firefighters must achieve. (DAR NOTE: H.B. 146 (2004) is found at Chapter 47, Laws of Utah 2004, and was effective 05/03/2004.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 65A-8-6

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** Costs to train firefighters are borne by the individual fire departments, districts, and the state, and this rule merely clarifies which personnel must be trained to a Firefighter I standard when engaged on a wildland fire. Since state firefighters are already trained to the minimum standard, there is no cost or savings to the state budget.

❖ **LOCAL GOVERNMENTS:** This change might save local fire departments some training money from training nonfirefighting personnel who are involved in firefighting but not engaged in suppression efforts

❖ **OTHER PERSONS:** This change should have no effect on other persons savings or costs. Individual fire departments are responsible for the training of their personnel, so costs to other persons would be borne by the department, district, or state.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This change may provide costs savings to fire departments and fire districts by reducing the number of people required to be trained to meet the intent of the law.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Legislative intent of H.B. 146 (2004) was to have a minimum standard of training for

firefighters fighting wildland fires. The rule change clarifies that those support functions that may be assigned to a fire such as a transport driver, courier, tender drivers, and others need not adhere to the minimum standard that the firefighters must achieve and thus reduce the number of personnel that is required to be trained. Therefore, no fiscal impact on businesses is anticipated. Michael Styler, Executive Director

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

NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE  
SUITE 3520  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dave Grierson at the above address, by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at [davegrierson@utah.gov](mailto:davegrierson@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Joel Frandsen, Director

#### **R652. Natural Resources, Forestry, Fire and State Lands.**

##### **R652-122. County Cooperative Agreements with State for Fire Protection.**

##### **R652-122-300. Minimum Standards for Wildland Fire Training.**

(1) These standards apply to fire departments representing those counties who have cooperative wildland fire protection agreements with the State of Utah or other fire departments which are contracted with the counties to provide fire protection on private wildland.

(2) All members of the fire department engaged in [responding to] private and state wildland fires within the county's jurisdiction will be certified by the Utah Fire Certification Council as Wildland Firefighter I. The standard must be obtained by June 1, 2007. For purposes of this rule, "engaged in private and state wildland fires" means those fire fighters who are directly involved in the suppression of a wildland fire, or those fire fighters, on scene, who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire, or those individuals that have fire suppression responsibilities with in close proximity of the fire perimeter. "Engaged in private and state wildland fires" does not mean a person used as a courier, or driver of a vehicle other than those used for fire suppression, or a person used in a non-tactical, support or other peripheral function not in close proximity to a wildland fire.

(3) Fire Department personnel who supervise other firefighters on private and state wildland fires within the county's jurisdiction will be certified by the Utah Fire Certification Council as Wildland Firefighter II. This standard must be obtained June 1, 2010.

**KEY:** minimum standards, wildland urban interface, cooperative agreement

**Date of Enactment or Last Substantive Amendment:** ~~December 16, 2005~~ 2006

**Authorizing, and Implemented or Interpreted Law:** 65A-8-6



## Natural Resources, Wildlife Resources

# R657-22-18

## Hunting Hours and Hunter Requirements

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29160

FILED: 10/24/2006, 14:10

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to bring Rule R657-22 into compliance with the statute change to Section 23-19-24, which occurred during the 2006 General Session when H.B. 328 was passed that did away with the minimum age requirement for hunting small game. (DAR NOTE: H.B. 328 (2006) is found at Chapter 325, Laws of Utah 2006, and was effective 08/01/2006.)

SUMMARY OF THE RULE OR CHANGE: This change removes the minimum age requirement of "12 years old" within Subsection R657-22-18(2).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-5 and 23-17-6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The amendment removes the minimum age requirement for hunting on Commercial Hunting Areas. Therefore, the Division of Wildlife Resources (Division) determines that these amendments will not create any cost or savings impact to the state budget or the Division's budget, since changes will not increase workload and can be carried out with existing budget.

❖ LOCAL GOVERNMENTS: None--The filing does not create any direct costs or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: The amendment removes the minimum age requirement for hunting on Commercial Hunting Areas. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment brings the rule into compliance with Section 23-19-24. The Division determines that there are no additional compliance costs associated with the amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 29138

FILED: 10/18/2006, 08:05

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

NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY UT 84116-3154, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Robin Thomas at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at robinthomas@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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: James F Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.  
 R657-22. Commercial Hunting Areas.  
 R657-22-18. Hunting Hours and Hunter Requirements.**

(1) Game birds may be taken on a CHA only one-half hour before sunrise through one-half hour after sunset, except on a CHA located adjacent to a state wildlife or waterfowl management area, game birds may be taken one-half hour before sunrise through sunset.

(2) Any person hunting within the state on any CHA must ~~be at least 12 years old and~~ meet hunter education requirements as provided in Section 23-17-6.

**KEY: game birds, wildlife, wildlife law**  
**Date of Enactment or Last Substantive Amendment: ~~December 17, 2003~~ 2006**  
**Notice of Continuation: June 3, 2002**  
**Authorizing, and Implemented or Interpreted Law: 63-46b-5; 23-17-6**

◆ ————— ◆

**Public Education Job Enhancement  
 Program, Job Enhancement Committee**  
**R690-100**  
**Public Education Job Enhancement  
 Program Participant Eligibility and  
 Requirements**

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides standards and procedures for administering the Public Education Job Enhancement Program (PEJEP).

SUMMARY OF THE RULE OR CHANGE: The rule provides procedures for designating recipients and offering scholarships and cash awards from PEJEP funding; provides time lines for the submission and approval of applications; provides procedures for the distribution of awards and scholarships; and provides procedures for monitoring educator process and compliance with the law and this rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1a-602(5)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Funds have been appropriated specifically for the PEJEP program.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. School districts do not need to pay educators or provide any funding for educator participation in the PEJEP Program.
- ❖ OTHER PERSONS: Other persons may save expenses/costs due to the rule. Educators who are eligible for awards under this rule may receive money to use for tuition toward an advanced degree or National Board certification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be compliance costs for affected persons. If an award recipient defaults on the terms of the award, the recipient will be responsible to repay, as determined by the Public Education Job Enhancement Program Committee, the full or prorated amount of the award or scholarship received.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. John Sutherland, Committee Chair

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

PUBLIC EDUCATION JOB ENHANCEMENT PROGRAM  
 JOB ENHANCEMENT COMMITTEE  
 250 E 500 S  
 SALT LAKE CITY UT 84414, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Clara Walters at the above address, by phone at 801-538-7616, by FAX at 801-538-7973, or by Internet E-mail at clara.walters@schools.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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2006

AUTHORIZED BY: John Sutherland, Chair, Job Enhancement Committee

**R690. Public Education Job Enhancement Program, Job Enhancement Committee.**

**R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements.**

**R690-100-1. Definitions.**

A. "Advancement Award/scholarship recipient" means a scholarship to an educator qualified under Sections 53A-1a-601(1) and (2)(a) and (b). The scholarship may be used for:

(1) training in subject areas designated in Section 53A-1a-601(1); and

(2) tuition costs only as designated in Section 53A-1a-601(2)(b) for a master's degree, teaching endorsement, or approved graduate program including National Board Certification.

B. "Contract" means a binding agreement signed and agreed to by the recipient, the PEJEP Committee and USOE under 53A-1a-602(3)(c); applications are available through the USOE and online through the USOE website at [www.schools.utah.gov](http://www.schools.utah.gov).

C. "Critical areas of educator need" means secondary school teachers with expertise in mathematics, physics, chemistry, physical science, learning technology, or information technology and PreK-12 special education teachers.

D. "Information technology" for purposes of this rule means courses in information support and services, interactive media, network systems and programming, and software development as listed under information technology education in career and technical education (CTE) on the USOE website.

E. "Learning technology" for the purpose of this rule means a degree/endorsement earned to implement use of technology in classrooms by secondary school teachers in the critical areas of educator need identified under R690-100-1C.

F. "Letter of authorization" under Section 53A-1a-601(3) means a designation given to an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements for the course(s) he teaches, who is employed by a school district, who has an educator license under R277-502.

G. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

H. "Opportunity Award/signing bonus/cash award recipient" means a cash award paid in two installments to qualified educators under 53A-1a-601(2)(c) and (3)(a) and (b).

I. "Public Education Job Enhancement Program Committee (Committee)" means the committee designated under Section 53A-1a-602.

J. "Public Education Job Enhancement Program (PEJEP)" means a program authorized under Section 53A-1a-601.

K. "Special education teacher" means an educator who teaches at least three classes (or fifty percent of the school day) of primarily PreK-12 special education students or whose contract assignment is designated by the district as SPECIAL EDUCATION. Special education teacher may also mean speech and language pathologists and psychologists and special education educators teaching grade 12+ in a high school.

L. "Technology training" for the purpose of this rule means professional development training to public school superintendents, administrators, and principals in the effective use of technology in public schools.

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

**R690-100-2. Authority and Purpose for Opportunity and Advancement Awards.**

A. The rule is authorized under Section 53A-1a-602(5) which requires the Committee to make a rule establishing policies and procedures for:

(1) designating the recipients and offering scholarships and cash awards from PEJEP funding;

(2) timelines for the submission and approval of applications;

(3) the distribution of the awards and scholarships; and

(4) monitoring educator progress and compliance with the law and this rule.

**R690-100-3. Opportunity Awards.**

A. Timelines for Opportunity Awards

(1) The Committee shall provide to all public school district superintendents and charter schools, by June 1 of each year, teacher information forms and funds available for Opportunity Awards consistent with critical areas of educator need identified under R690-100-1C.

(2) Information forms for awards shall also be available from the USOE and on-line through the USOE website.

(3) Completed information forms for Opportunity Awards, including required documentation, shall be due to the USOE from applying school districts and charter schools by November 1 annually.

(4) Recipients of Opportunity Awards shall receive the cash award in two installments, with the first initial payment at the beginning of the four year teaching commitment and the second installment at the conclusion of four consecutive years of teaching.

(a) The recipient shall repay a portion of the initial payment if the recipient fails to complete two years of the consecutive four year teaching commitment unless waived for good cause by the Committee, designated in Section 53A-1a-602; and

(b) The recipient shall not receive the second installment if the recipient fails to complete the consecutive four year teaching commitment.

(5) The USOE shall receive documentation annually by October 1 from recipients of Opportunity Awards documenting full-time employment as educators during the previous school year.

(6) If the recipient desires to decrease his teaching employment below full-time or take a leave of absence at any time, the recipient shall submit a formal written request to the Committee. The Committee may grant or deny permission for the employment change within 30 days of the request; if permission is denied by the Committee, provisions under 53A-1a-601(1)(c)(ii) shall apply immediately.

(7) The USOE shall be immediately notified by the Opportunity Award recipient if the recipient changes employers, leaves public education, or moves from the state; provisions of 53A-1a-601(1)(c)(ii) shall apply immediately if the recipient leaves public education or leaves the state.

(8) Opportunity Award recipients shall notify the USOE at the conclusion of the recipient's consecutive four year teaching commitment.

(9) The USOE shall make the final Opportunity Award payment in a timely manner upon notification by the recipient and documentation of full-time employment during the required four year period.

B. Award and Funding Requirements for Opportunity Awards

To be eligible to receive an award under this rule, an educator shall:

(1) have signed an employment contract with a school district or charter school;

(2) be recommended by secondary school principal, school district superintendent or designee or charter school director;

(3) be a fully licensed educator in Utah or enrolled in an alternative educator licensing program in:

(a) pre-K-12+ special education; or

(b) a secondary education endorsement program (grades 7-12) in critical areas of educator need identified under R690-100-1C; and

(4) have taught under a letter of authorization for at least one year in the areas referred to under Section 53A-1a-601(1) and received a superior evaluation as a classroom teacher.

**R690-100-4. Advancement Awards.**

A. Timelines for Advancement Awards

(1) Applications for Advancement Awards shall be available from the USOE and online through the USOE website.

(2) Educators may apply at any time throughout the year and may receive an award subject to funds available.

(3) Recipients of Advancement Awards shall provide documentation to the USOE at least one time during each semester that the recipient is enrolled in an approved higher education program.

(4) The USOE shall notify recipients immediately if recipients' course work or grades are unsatisfactory; recipients continued participation shall be reviewed by the Committee.

(5) Recipients shall begin taking higher education courses within one calendar year of receipt of the award.

(6) Recipients have four years to complete course work for a master's degree, teaching endorsement, or approved graduate program.

(7) Upon completion of the master's degree, teaching endorsement, or approved graduate program, a recipient shall notify the USOE and provide an official higher education transcript or appropriate documentation.

(8) Recipients of the Advancement Awards shall notify the USOE immediately if they change public education employers, drop their class loads below 3 credit hours or move from the state.

(9) If the recipient interrupts employment for any reason, the recipient shall submit a formal written letter to the Committee explaining the reason for the interruption and requesting a continuance of the contract.

B. Award and Funding Requirements for Advancement Awards

To be eligible to receive an award under this rule, an educator shall:

(1) be approved by the employing principal and the school district superintendent or designee or a charter school director and charter school board chair;

(2) be a fully licensed Utah educator or enrolled in a Utah alternative educator licensing program.

(3) agree to enroll in eligible schools or programs within one year from the date of the award;

(4) provide documentation to the Committee of acceptance into an approved graduate program, including National Board Certification, leading to a master's degree or teaching endorsement in areas identified under R690-100-1C;

(5) not use the award to pay for course work in counseling or administration.

C. Additional Recipient Requirements for Advancement Awards:

(1) Complete the program within four years from the date of initial enrollment.

(2) Complete endorsement classes in a timely manner as approved in the contract with the Committee.

(3) Successfully finish all classes for which recipient is reimbursed.

(4) Enroll and seek reimbursement only for courses leading directly to a master's degree, teaching endorsement, or approved graduate program, for which the award was made.

(5) Show evidence of progress toward master's degree, teaching endorsement, or approved graduate program, every semester for which the award is used.

(6) Recipient commits to teach in Utah public schools in an area identified in 53A-1a-601(1) for a period of four consecutive school years following the completion of the endorsement or degree for which the award was made.

D. Award Priorities for Advancement Awards

(1) Superintendent/principal recommendations

(2) Existing formal qualifications, evaluations, degrees, certificates, endorsements, licenses of educators in district/school.

(3) Applicants' discussions of career plans, educational objectives, and estimated time periods for completion of course work.

(4) Alignment of applicant career/educational objectives with intent and express purposes of Section 53A-1a-601.

**R690-100-5. Enforcement and Penalty Provisions for Breach of PEJEP Contract for Opportunity and Advancement Awards.**

A. If an Opportunity Award or Advancement Award recipient fails to satisfy the teaching commitment, earn the master's degree, or teaching endorsement, or complete the approved graduate program, the recipient shall be responsible to repay, as determined by the Committee, the full or a prorated amount of the cash award or scholarship fund received.

B. The entire amount of the cash award or scholarship may become due and payable immediately, including interest following review by the Committee for violations of Section 53A-1a-601 or this rule.

C. The recipient shall be responsible for any and all necessary collection costs.

D. Legal action may be taken against recipient as recommended by the Committee and approved by the USOE and the Utah Attorney General's Office.

E. A recipient may be referred to the Utah Professional Practices Advisory Committee for possible action against the recipient's license for willful violations of law or this rule.

F. Should recipient's license be suspended or revoked by the Utah State Board of Education, consistent with due process provided for in state law, the award or scholarship shall be canceled at the time of license revocation and subject to the conditions stated in R690-100-5.

G. Exceptions to any provision of the Opportunity or Advancement Award contracts shall be approved in writing by the Committee.

**R690-100-6. Miscellaneous Provisions or Requirements for the Opportunity and Advancement Awards.**

A. In any given school year, a teacher shall not receive both an Opportunity Award and an Advancement Award and shall not receive two Opportunity awards concurrently.

B. Recipients of the Opportunity Award and Advancement Award may not apply for a second award until the consecutive four year teaching commitment has been fulfilled.

C. Opportunity and Advancement award educators may take less than a full-time course load in the areas identified in 53A-1a-601(1), if student demand is not sufficient for a full-time assignment in those subject areas.

D. If the Opportunity or Advancement Award recipient should die before the conditions or repayment of the award is satisfied, the entire commitment or balance shall be waived.

E. The educator shall be teaching in the critical areas of educator need identified under R690-100-1C,D, and E, to apply for a PEJEP scholarship toward any learning technology degree, endorsement, or advanced degree.

F. Advancement Award Recipients taking 9 credit hours during summer months (forgoing employment during that time) may receive a \$6,000 summer stipend; summer stipends shall be prorated for educators in regulated programs and those recipients may receive \$2,000 per 3 credit hour, up to \$6,000.

G. Endorsement caps shall be commensurate with increased tuition costs for the specific endorsement; and

H. Endorsement program recipients may receive only one summer stipend of \$6,000 per 9 credit hours.

I. Teachers who have their assignment changed which takes them out of their classroom teaching in the PEJEP content areas, must submit a petition to the Committee for potential waiver of penalties associated with the change.

J. The consecutive four year teaching commitment may be met by educators who are promoted, assigned, or advised to change their teaching assignment and work within the district or state in a similar role for which the Opportunity Award or Advancement Award was made, following Committee approval.

**R690-100-7. Provisions or Requirements for the Technology Training Component of 53A-1a-601(4)(a).**

Technology training courses, programs or conferences that provide professional development for public school superintendents, administrators and principals in the effective use of technology in public schools shall be submitted to the Committee by applicants for consideration and approval under 53a-1A-601(4).

**KEY: scholarships, awards, educators**

**Date of Enactment or Last Substantive Amendment: 2006**

**Authorizing, and Implemented or Interpreted Law: 53A-1a-602(5)**

◆ ————— ◆

## Public Safety, Peace Officer Standards and Training **R728-401-3** Procedures for Course Validation

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29147

FILED: 10/23/2006, 13:48

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update and reword some language in the rule so it conforms with how the process is currently administered.

SUMMARY OF THE RULE OR CHANGE: The rule will have several changes. There will be some rewording of sentences. There are changes to deadlines. There are changes to give satellite and agency academies more opportunity to provide their own final testing. The agency and satellite academies will have a change to require annual on-site audits.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The amendments to this particular rule will not drastically effect the way Peace Officer Standards and Training (POST) approves the certification of Peace Officers. Therefore, there will not be a fiscal impact due to this rule amendment.

❖ LOCAL GOVERNMENTS: The amendments to this particular rule will not drastically affect the way POST approves the certification of Peace Officers. Therefore, there will not be a fiscal impact due to this rule amendment.

❖ OTHER PERSONS: The amendments to this particular rule will not drastically affect the way POST approves the certification of Peace Officers. Therefore, there will not be a fiscal impact due to this rule amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this particular rule will not drastically affect the way POST approves the certification of Peace Officers. Therefore, there will not be a fiscal impact due to this rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will not have a fiscal impact on businesses. Scott Duncan, Commissioner

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

PUBLIC SAFETY  
PEACE OFFICER STANDARDS AND TRAINING  
4525 S 2700 W  
SALT LAKE CITY UT 84119, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Steve Winward at the above address, by phone at 801-965-4373, by FAX at 801-965-4910, or by Internet E-mail at [swinward@utah.gov](mailto:swinward@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 12/18/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 01/08/2007

AUTHORIZED BY: Rich Townsend, Director

**R728. Public Safety, Peace Officer Standards and Training.**

**R728-401. Requirements For Approval and Certification of Peace Officer Basic Training Programs and Applicants.**

**R728-401-3. Procedures for Course Validation.**

A. The course must conform to the content and standards established by POST and approved by the POST Council.

B. All applicants will pass the POST entrance level test. ~~[It is the position of POST that reading comprehension, basic mathematic skills, and basic grammar and writing skills are essential functions of peace officers.—]~~ The POST entrance level test is a valid test used to demonstrate ability in ~~[these areas—]~~ the areas of reading comprehension, basic mathematic skills, basic grammar and writing skills.

C. All applicants will complete the POST application packet. POST must receive application packets at least ~~[two]~~ four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST. Without exception, medical requirements will be completed and submitted to POST before training begins.

1. Sponsored applicants - The sponsoring agency will complete the background investigation and insure that the requirements in Section 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant as he relates to Section 53-6-203, or R728-403, POST shall be consulted before any training begins.

2. Self-Sponsored applicants - POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students will adhere to the following guidelines when providing POST with application packets.

a. Check applications to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.

b. Provide POST with applications at least ~~[two]~~ four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST (without exception medical release forms will be completed and submitted to POST before physical training begins.)

~~[e. Provide POST with a schedule of classes and instructors.~~

~~d.c.~~ Bring to POST's attention any information provided in the application that should be examined closely in light of the provisions outlined in Section 53-6-203 and R728-403.

D. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.

Note: Any applicant denied by POST may appeal the decision by following the approved POST appeal process.

E. All instructors must be POST certified, and approved to instruct in their assigned topic(s).

F. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives. Instructors must read and sign Contractual Agreement Form ~~[Form #771/89 (Performance Objectives Agreement)]~~ indicating they are aware of and are willing to teach the POST approved performance objectives.

G. Sponsoring agencies and program coordinators must administer POST approved examinations and maintain a file of examinations used. The final certification examination, which is a comprehensive examination, requires a minimum score of 80% to pass the test. ~~[The final certification examination, which is a comprehensive examination, will be given by POST. A minimum score of 80% is required to pass the test. The final physical assessment test will also be given by POST.]~~ Requirements necessary to pass the physical assessment test are set by POST and approved by the POST Council.

H. Attendance rosters are to be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. No attendee can miss more than ~~[10% of the course]~~ two days of the police academy and still be certifiable. Under no circumstances will a student be certified if he misses (and fails to make-up) the following classes:

1. Ethics and Professionalism
2. Laws of Arrest
3. Laws of Search and Seizure
4. Use of Force
5. First Aid (CPR only)
6. Emergency Vehicle Operation
7. Vehicle Operation Liability
8. Vehicle Operation Practical
9. Arrest Control Techniques (practical exam)
10. Firearms Safety
11. Firearms Range/Day Shooting (qualification only)
12. Firearms Range/Night Shooting
13. Reasonable Force
14. Firearms Decision Making
15. Crimes-In-Progress (practical only)

I. Sponsoring agencies and programs must ensure that students possess a valid driver license when involved in any training that requires the operating of a motor vehicle. POST recommends that driver license checks be made through the State Division of Driver License.

J. Successful completion of the course and completion of all POST required paperwork is necessary before certification or certifiability will be granted. The paperwork must be submitted to POST within two weeks of completion of the course.

K. ~~[Upon completion of the training program, sponsoring agencies and programs will contact POST and make arrangements for the Certification and Physical Assessment Exams to be given.]~~ Anyone failing the Certification Exam once may take it again within a one year time frame. The requirement of taking the certification test after a year, for waiver purposes, will be applied by calculating the year from the date of successfully passing the test. Anyone who fails a certification re-take will not be permitted to take it again until they satisfactorily complete another approved basic training program. Anyone failing the Physical Assessment Exam will have four years to meet the requirements.

L. POST will conduct annual audits and site visits for each satellite or agency academy to verify that they are conforming to POST standards.

~~[L.]~~M. When all requirements have been met, the sponsoring agency administrator shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification begins when POST receives an application for certification and confirms that the applicant has completed a basic peace officer training program and met all requirements.

~~[M.]~~N. No person may function with any authority until he has satisfactorily completed an approved training program and received POST certification.

**KEY: law enforcement officers, peace officer basic course<sup>[\*]</sup>, approval<sup>[\*]</sup>**

**Date of Enactment or Last Substantive Amendment: ~~April 15, 1997~~2007**

**Notice of Continuation: October 3, 2002**

**Authorizing, and Implemented or Interpreted Law: 53-6-202**

◆ ————— ◆

## Public Safety, Peace Officer Standards and Training **R728-402** Application Procedures to Attend a Basic Peace Officer Training Program

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29176  
FILED: 10/31/2006, 13:23

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to refer to a more applicable section in the Utah Code, and reword language defining application due dates.

**SUMMARY OF THE RULE OR CHANGE:** This amendment changes the Code from Section 53-6-205 to Section 53-6-204 which is more applicable for this rule. It also changes the dates applications are due to Peace Officer Standards and Training (POST) from "timely manner" to four weeks prior to the academy deadline.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 53-6-203 and 53-6-204

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** This amendment simply changes a Utah Code reference to a more applicable section and provides a specific time frame for applications. As substantive requirements on the state are not changed, there is no cost or savings.

❖ **LOCAL GOVERNMENTS:** This amendment simply changes a Utah Code reference to a more applicable section and provides a specific time frame for applications. As substantive

requirements on local governments are not changed, there is no cost or savings.

❖ **OTHER PERSONS:** This amendment simply changes a Utah Code reference to a more applicable section and provides a specific time frame for applications. As substantive requirements on the applicants are not changed, there is no cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule change will not fiscally impact any other individuals.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendment to this rule will not fiscally impact any government agency or any other individual. Scott Duncan, Commissioner

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

PUBLIC SAFETY  
PEACE OFFICER STANDARDS AND TRAINING  
4525 S 2700 W  
SALT LAKE CITY UT 84119, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Steve Winward at the above address, by phone at 801-965-4373, by FAX at 801-965-4910, or by Internet E-mail at swinward@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 12/29/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2007

AUTHORIZED BY: Rich Townsend, Director

#### **R728. Public Safety, Peace Officer Standards and Training. R728-402. Application Procedures to Attend a Basic Peace Officer Training Program.**

##### **R728-402-1. Policy.**

A. Pursuant to Sections 53-6-203 and ~~[53-6-205]~~53-6-204 it shall be the responsibility of each law enforcement agency, upon its hiring of an employee, to submit a complete application to POST before admission is approved to a basic peace officer training program.

B. Self-Sponsored applicants must submit a complete application to POST before they will be admitted to a basic peace officer training program.

##### **R728-402-2. Procedure.**

A. Application will be made by completing the POST approved application packet. Application packets can be obtained from POST.

B. Application must be ~~[made in a timely manner]~~submitted four weeks prior to the start of the academy via website or mail in order to allow POST adequate time to process applications and schedule applicants.

C. Applications must be complete when submitted to POST. POST will not accept any application that is not complete.

D. Peace Officer Standards and Training will pay the cost of board, room and supplies for sponsored students attending the Police Academy.

E. Self-Sponsored students must pay the current approved rate.

F. Attendance at the Academy will be denied for failure to meet the requirements set forth in Section 53-6-203 and Rule R728-403.

**KEY: law enforcement officers, basic application procedures[~~2~~], police training**

**Date of Enactment or Last Substantive Amendment: [~~April 15, 1997~~]2007**

**Notice of Continuation: October 3, 2002**

**Authorizing, and Implemented or Interpreted Law: 53-6-203**



Regents (Board Of), Administration  
**R765-610**  
Utah Higher Education Assistance  
Authority Federal Family Education  
Loan Program, PLUS, SLS and Loan  
Consolidation Programs

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 29141

FILED: 10/20/2006, 11:55

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is not needed as it only references federal law governing student loans and provides definitions which are already provided by federal programs.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety since it only has only references federal loans and definitions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53B-12-101(6)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no costs nor savings to the state budget since this rule only pertains to definitions of federal student loan programs.

❖ LOCAL GOVERNMENTS: There are no costs nor savings associated with the repeal of this rule for any local government entity.

❖ OTHER PERSONS: There are no costs associated with the repeal of this rule for any individual or private citizen.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any individual, partnership, corporation, government agency, or any other organization either public or private since this rule is merely one of definition. Any such loan program as defined in this rule is administered according to federal regulations. There are no costs associated with the repeal of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Upon reviewing this rule, and the repeal of this rule, I can see no fiscal impacts on any business in Utah or any State. Richard Kendell, Commissioner

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

REGENTS (BOARD OF)  
ADMINISTRATION  
BOARD OF REGENTS BUILDING, THE GATEWAY  
60 SOUTH 400 WEST  
SALT LAKE CITY UT 84101-1284, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rccrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: Mark H. Spencer, Associate Commissioner

**R765. Regents (Board of), Administration.**

~~**R765-610. Utah Higher Education Assistance Authority Federal Family Education Loan Program, PLUS, SLS and Loan Consolidation Programs.**~~

~~**R765-610-1. Purpose.**~~

~~— To incorporate by reference all statutes, regulations and rules governing the Federal Family Education Loan Program, PLUS, SLS and Loan Consolidation programs.~~

~~**R765-610-2. References.**~~

~~— 2.1 Utah Code. Title 53B, Utah System of Higher Education, Chapter 12.~~

~~— 2.2 U.S. Congress, Title IV of the Higher Education Act of 1965, as amended, as of July 1, 2005.~~

~~— 2.3 U.S. Department of Education. Code of Federal Regulations, 34 CFR Parts 600, 668 and 682, as of July 1, 2005.~~

~~— 2.4 "Common Manual, Unified Student Loan Policy" published by Common Manual Guarantors, 2001, as of July 1, 2005.~~

~~**R765-610-3. Definitions.**~~

~~— 3.1 "UHEAA" means Utah Higher Education Assistance Authority.~~

~~— 3.2 "SLS" means Federal Supplemental Loans for Students Program.~~

~~— 3.3 "PLUS" means Federal PLUS Program.~~

~~— 3.4 "FFELP" means the Federal Family Education Loan Program. This consists of the Federal Subsidized Stafford Loan Program, the Federal Unsubsidized Stafford Loan Program, the Federal PLUS Program, the Federal Supplemental Loans for Students Program (SLS), and the Federal Loan Consolidation Program.~~

**~~R765-610-4. Incorporation by Reference.~~**

~~4.1 UHEAA, as the designated guarantor for the FFELP in the state of Utah, hereby incorporates by reference the following documents:~~

~~4.1.1 Title IV of the U.S. Higher Education Act of 1965, as amended, as of July 1, 2005.~~

~~4.1.2 U.S. Department of Education 34 CFR Parts 600, 668, and 682, as of July 1, 2005.~~

~~4.1.3 "Common Manual, Unified Student Loan Policy", published by Common Manual Guarantors, as of July 1, 2005.~~

**~~R765-610-5. Policy.~~**

~~5.1 Any action taken by UHEAA in accordance with UHEAA policies shall be performed by the Executive Director of UHEAA, or the Executive Director's designee.~~

~~5.2 UHEAA shall establish, from time to time, additional policies governing the operation of FFELP in accordance with requirements as referenced in 4.1.1, 4.1.2 and 4.1.3 of this rule. Such policies will be filed as rules in the Utah Administrative Code in accordance with the Administrative Rulemaking Act of this state as found in Title 63, Chapter 46a of the Utah Code.~~

~~5.3 Students and parents who are eligible for loans contemplated by this rule, and who wish to apply, shall be expected to comply with these rules. A copy of all federal statutes and regulations, and state rules, directly affecting FFELP, and a copy of the "Common Manual, Unified Student Loan Policy", are available for public inspection, or can be obtained from UHEAA's offices at Board of Regents Building, The Gateway, 60 South 400 West, Salt Lake City, Utah 84101.~~

~~**KEY:** higher education, student loans~~

~~**Date of Enactment or Last Substantive Amendment:** December 4, 2001~~

~~**Notice of Continuation:** January 4, 2002~~

~~**Authorizing, and Implemented or Interpreted Law:** 53B-12-101(6)~~



Tax Commission, Property Tax  
**R884-24P-68**  
 Property Tax Exemption for Taxable  
 Tangible Personal Property with a Total  
 Aggregate Fair Market Value of \$3,500  
 or Less Pursuant to Utah Code Ann.  
 Section 59-2-1115

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 29177

FILED: 10/31/2006, 13:45

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 338 (2006 General Session) provides a property tax exemption for certain tangible personal property. In administering this exemption, several issues have arisen. (DAR NOTE: H.B.

338 (2006) is found at Chapter 113, Laws of Utah 2006, and will be effective 01/01/2007.)

SUMMARY OF THE RULE OR CHANGE: This proposed section indicates that age-based vehicles do not qualify for this exemption; nor do items of personal property with a value before apportionment greater than \$3,500. This proposed rule also indicates that aggregation is done on a county basis and requires a taxpayer to respond within 30 days to a request to indicate whether the taxpayer has less than \$3,501 of taxable tangible personal property in the county.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-1115

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impacts were taken into account in H.B. 338 (2006).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in H.B. 338 (2006).
- ❖ OTHER PERSONS: None--Any fiscal impacts were taken into account in H.B. 338 (2006).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals who qualify for this exemption may see a significant reduction in their property tax paperwork depending on the procedures adopted by the particular county.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses who qualify for this exemption could see a reduction in their property tax paperwork in the County (or Counties) where they conduct business depending on the process adopted by that particular county. D'Arcy Dixon, Commissioner

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

TAX COMMISSION  
 PROPERTY TAX  
 210 N 1950 W  
 SALT LAKE CITY UT 84134, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: D'Arcy Dixon, Commissioner

**R884. Tax Commission, Property Tax.**  
**R884-24P. Property Tax.**  
**R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115.**  
(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value of \$3,500 or less.  
(2) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.  
(3) "Taxable tangible personal property" does not include tangible personal property:  
(a) subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2; and  
(b) with a fair market value before apportionment greater than \$3,500.  
(4) A taxpayer shall apply for the exemption provided under Section 59-2-1115 within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has less than \$3501 of taxable tangible personal property in the county.

**KEY: taxation, personal property, property tax, appraisals**  
**Date of Enactment or Last Substantive Amendment: 2006**  
**Notice of Continuation: April 5, 2002**  
**Authorizing, and Implemented or Interpreted Law: 59-2-1115**



Transportation, Administration  
**R907-66**  
 Administration,  
 Architecture/Engineering Services  
 Procurement, Consultant Services --  
 Eligibility of Costs for Reimbursement --  
 Bonuses or Incentive Compensation

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 29182  
 FILED: 11/01/2006, 11:55

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendment is proposed to implement a federal statutory change requiring use of certain federal regulations in the calculation of contract costs.

**SUMMARY OF THE RULE OR CHANGE:** The amendment incorporates a section of the Code of Federal Regulations and deletes part of the current rule that the federal law now disallows.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 48 CFR Part 1, 2006 Edition

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** There will be an increase in the budget because the new federal regulation requires the state to allow the payment of executive pay bonuses. However, it is impossible to say how much budgets will increase because it depends on the amount of bonus requested, earned, and which contractor gets a particular project.
- ❖ **LOCAL GOVERNMENTS:** There will be an increase in the budget because the new federal regulation requires the state to allow the payment of executive pay bonuses. However, it is impossible to say how much budgets will increase because it depends on the amount of bonus requested, earned, and which contractor gets a particular project. Some of the monies for payment of bonuses may come out of a local match.
- ❖ **OTHER PERSONS:** There should be no costs or savings to any other persons because no other persons are affected by it. In other words, only the department administers transportation contracts. Private individuals who contract with the department will only see their income go up because they can now get bonuses paid. They will not have to pay anything for the department to use the federal regulations.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs for private individuals or companies. However, as noted above, there will probably be an increase in costs to state and local budgets.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no fiscal impact on businesses except those that obtain contracts and get to recoup their bonuses. 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.

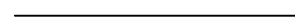
**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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](mailto: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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: John R. Njord, Executive Director





**R907. Transportation, Administration.****R907-66. [Administration, Architecture/Engineering Services Procurement, Consultant Services — Eligibility of Costs for Reimbursement — Bonuses — or — Incentive Compensation.] Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects.****R907-66-1. Purpose.**

— This rule establishes whether bonuses or incentive compensation allowed as costs incurred in cost reimbursable contracts with consultant engineering firms and are, therefore, eligible for reimbursement by UDOT.

**R907-66-2. Authority.**

— The provisions of this rule are authorized by Title 63, Chapter 46a, Utah Administrative Rulemaking Act; Utah Code Ann. Section 63-56-13; and Utah Code Ann. Section 72-1-201.

**R907-66-3. Definitions.**

— (1) "FAR" means the Federal Acquisition Regulations contained in Title 48 of the Code of Federal Regulations.

— (2) Key management officers means:

— (a) owners, presidents, chief executive officers, or other individuals who act in a similar management capacity;

— (b) the four most highly compensated individuals in senior management (non-ownership) positions; and

— (c) the five most highly paid individuals in senior management positions at each intermediate home office or branch if the consultant firm is organizationally subdivided into intermediate home offices or branch offices and their normal compensation, without including the bonus or incentive compensation, falls within the top 5 percent of all employees in the company.

**R907-66-4. Bonus/Incentive Cost Limitation For Consultant Architecture/Engineering.**

— (1) Bonuses or incentive compensation for key management officers are not eligible for reimbursement.

— (2) Bonuses or incentive compensation for non-key management officers and employees may be eligible for reimbursement if:

— (a) the consultant enters into an agreement with its employees pursuant to an established plan or policy before the services are rendered;

— (b) the agreement establishes the terms by which the consultant pays bonuses or incentive compensation to employees;

— (c) the basis for payment of bonuses or incentive compensation is supported and documented; and

— (d) the bonuses or incentive compensation are reasonable.

— (3) UDOT will remove ineligible bonus/incentive compensation from the overhead cost pool when developing the allowable overhead/indirect cost rate. The consultant firm shall submit annual audit reports to verify that its indirect costs and overhead rates comply with Section 31 of FAR and UDOT's own administrative rules, policies, or contractual provisions.]

**R907-66-1. Reason for Incorporation - Federal-Aid Projects and State Projects.**

— (1) 23 U.S.C. 112 requires States to use the Federal Acquisition Regulations (FAR), contained in 48 CFR Part 1 to calculate appropriate contract costs in all Federal-Aid transportation projects. Previously, federal law allowed States to develop their own cost principles and procedures in Federal-Aid projects.

— (2) Consequently, the Department adopts and incorporates 48 CFR Part 1 for use in Federal-Aid transportation projects.

— (3) Because many transportation projects that the Department administers receive federal aid, the Department believes it is generally most efficient to also use FAR when calculating contract cost principles and procedures in transportation projects financed solely with state funds. Therefore, the Departments also adopts and incorporates 48 CFR Part 1 for use in most state-financed transportation projects.

**R907-66-[5]2. Financial Screening.**

(1) To verify that the calculated overhead and hourly billing rates comply with FAR, UDOT conducts an initial financial screening and approval of consultants desiring to submit a Statement of Qualification (SOQ) for architecture and engineering service contracts.

(2) Consultants shall update their financial screening information by submitting a new completed financial screening application and related information to the Consultant Services Division. The consultant shall file the updated applications annually, on the anniversary date of the initial filing.

**R907-66-[6]3. Contract Negotiations.**

(1) UDOT negotiates consultant contracts with the firm it considers most qualified to provide such services, using guidelines developed by the Consultant Services Division. UDOT prepares independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that UDOT considers fair and reasonable. Negotiations will end when UDOT decides that it cannot agree on terms with the first most qualified firm. UDOT will then begin negotiations with the next most qualified firm. This process continues until either mutually agreeable terms are negotiated or UDOT chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both selection and negotiations are public information and can be obtained by contacting the Consultant Services Division.

**R907-66-[7]4. Award of Contracts.**

UDOT awards the contract to the best qualified consultant with which it can negotiate a fair and reasonable cost as required by state rules and FAR and in accordance with UDOT selection procedures and guidelines.

**R907-66-[8]5. Execution of Contracts.**

UDOT considers no contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

**KEY: transportation, contracts, reimbursement, bonuses**  
**Date of Enactment or Last Substantive Amendment: ~~December 18, 2001~~ 2006**  
**Authorizing, and Implemented or Interpreted Law: 63-56-13; 72-1-201**

◆ ————— ◆

Transportation, Operations,  
Construction  
**R916-1**  
Advertising and Awarding Construction  
Contracts

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29183

FILED: 11/01/2006, 12:06

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is recommended in order to eliminate the need for companies to prequalify if the project they want to work on is for less than \$1,500,000.

SUMMARY OF THE RULE OR CHANGE: The rule amendment increases the prequalification limit to \$1,500,000 from \$500,000 and instructs members of the public to download plans from the web rather than get them in person at department headquarters.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This may save the department money because it eliminates the need for companies to prequalify on projects that are for less than \$1,500,000. The directive to obtain plans on the web should save some employee time in fulfilling copying requests.
- ❖ LOCAL GOVERNMENTS: This rule does not affect local governments, so they should not increase or decrease in costs. Local governments do not administer transportation contracts and they do not have to pay for them; therefore, there will be no costs or savings to them.
- ❖ OTHER PERSONS: This rule will benefit private companies and individuals because they will no longer have to prequalify for certain projects and will not have to pay copying costs for plans.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs for affected persons. It will only save money.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact from this rule. John R. Njord, Executive Director

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

TRANSPORTATION  
OPERATIONS, CONSTRUCTION  
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](mailto: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 12/15/2006.

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006

AUTHORIZED BY: John R. Njord, Executive Director

**R916. Transportation, Operations, Construction.**

**R916-1. Advertising and Awarding Construction Contracts.**

**R916-1-4. Bidding Proposals, Plans and Specifications.**

(1) Bidding proposals, plans and specifications shall be available for inspection at all Region offices, Cedar City, Price, Richfield and Salt Lake City headquarters. Plans are available for download at the department's website, [www.udot.utah.gov](http://www.udot.utah.gov) ~~[sale (non-refundable fee) only at the Salt Lake City headquarters, Construction Division office.]~~

(2) Prior to submitting a bid, the bidder shall become prequalified at least 10 working days prior to bid opening date, under Rule R916-2 concerning prequalification of contractors. Prequalification of bidders is not required on projects estimated under \$1,500,000 ~~[500,000]~~.

(3) Prequalified contractors may obtain bidding proposals, plans and specifications and non-prequalified contractors may obtain non-bidding plans and specifications from the department's website, [www.udot.utah.gov](http://www.udot.utah.gov) ~~[upon payment of a non-refundable fee as specified in the notice to contractors].~~

(a) Projects shall not be awarded when the sum of the amount of uncompleted work, both in and outside of the state of Utah, shown on the contractor's "Status of Work Under Contract" form and the bid amount submitted exceeds the amount for which the contractor is prequalified. This transaction is performed at the close of bid opening for all apparent low bidders, on all projects with an advertised engineer's estimate over \$1,500,000 ~~[500,000]~~.

(b) Two or more contractors who have prequalified separately and desire to enter a joint bid on a single project may do so upon submitting a letter of intent to the department prequalification secretary at least four working days prior to bid opening. The prequalification of each contractor can then be considered for consolidation to place a bid as prime.

(4) If it is necessary to issue an addendum to the plans and specifications during the advertising period, the department shall ~~[call and]~~ fax a copy to the prime bidders, then mail a copy of the addendum by certified mail to each contractor holding bidding proposals. ~~[The department shall mail a copy of the addendum by first class mail to all other plan holders.]~~

**R916-1-5. Bidding Requirements and Conditions.**

(1) Each bidder shall submit their proposal upon the forms furnished by the department.

(2) Sealed proposals shall be submitted to the department prior to the time and at the place specified in the notice to contractors.

(3) Proposals shall be publicly opened and read ~~[publicly]~~ at the time and place indicated in the notice to contractors.

(4) No proposal shall be considered unless accompanied by a guaranty in the form of certified check, cashier's check or guaranty bond for not less than five percent of the total amount of the bid.

(5) Each bidder must comply with the laws of Utah relative to the licensing of contractors. A contractor's license is required prior to the submission of a bid, except that a contractor may submit a bid on a Federal-aid highway project without having first obtained a license, provided the contractor, prior to undertaking any construction under that bid (at time of official award notification), shall be licensed in Utah.

(6) The right to reject any or all proposals is reserved by the department.

#### **R916-1-7. Execution of Contracts.**

(1) Unless the bonds are waived pursuant to Subparagraph (6), when the contract is executed, the successful bidder shall furnish a performance bond and a payment bond, each in a sum equal to the full amount of the contract. Each bond shall be on the form provided by the department and shall be executed by a surety company or companies licensed by the state of Utah. These companies must be listed on the current United States Department of the Treasury Circular 570 as acceptable sureties on Federal bonds. The department shall make available to the public this Circular at the following locations: Construction Division, UDOT Library, and Internet.

(2) The contract shall be signed by the successful bidder and returned together with the fully executed contract bonds and appropriate insurance documents within 15 days after the contract has been awarded.

(3) Failure to execute a contract and file acceptable bonds and appropriate insurance documents within 15 days after the contract has been awarded shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty.

(4) If the contract is not executed by the Department within 30 days after receiving signed contracts, ~~and~~ bonds, and insurance documentation, the bidder shall have the right to withdraw their bid without penalty.

(5) No contract shall be considered effective until it has been fully executed by all the parties thereto.

(6) In accordance with Utah Code Ann. Section 63-56-504, the Executive Director or designee may reduce or waive the amount of the payment and performance bonds below the 100% normally required, if he or she determines that the circumstances are such that the normal bonding requirement is unnecessary to protect the State.

**KEY: bids, advertising, contracts, bonding requirements**

**Date of Enactment or Last Substantive Amendment: [May 16, 2006]**

**Notice of Continuation: January 18, 2002**

**Authorizing, and Implemented or Interpreted Law: 27-12-7; 27-12-108; 63-49-4; 63-56-38; 63-56-13**



Transportation, Operations,  
Construction  
**R916-2-3**  
Prequalification Policy

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 29184

FILED: 11/01/2006, 12:11

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is designed to eliminate the need for prequalification for projects for less than \$1,500,000.

**SUMMARY OF THE RULE OR CHANGE:** The amendment eliminates the prequalification step for companies interested in bidding on projects worth less than \$1,500,000 from \$500,000.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** This should save money in the state budget because it will eliminate the work associated with processing and reviewing prequalification documents. It is impossible to know how much that might be.

❖ **LOCAL GOVERNMENTS:** This rule does not apply to local governments because it only deals with the state process.

❖ **OTHER PERSONS:** This should save money for private parties because the number of prequalifications that they have to go through will be reduced or eliminated for some smaller firms.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no costs for affected persons because they won't have to pay anything. In fact, they will save money because they will no longer have to go through a prequalification process.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should be nothing but a positive fiscal impact on business. John R. Njord, Executive Director

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

TRANSPORTATION  
OPERATIONS, CONSTRUCTION  
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 12/15/2006.**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2006**

AUTHORIZED BY: John R. Njord, Executive Director

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**R916. Transportation, Operations, Construction.**

**R916-2. Prequalification of Contractors.**

**R916-2-3. Prequalification Policy.**

(1) Contractors desiring to submit bid proposals for construction contracts shall be prequalified by the department to ensure they have the resources and capability to successfully complete awarded contracts. Prequalification of contractors is not required for contracts that have an advertised estimate under \$~~1,500,000~~[500,000].

(2) Qualification ratings establish the type of construction work contractors may be permitted to perform and the maximum dollar value of contracts they are allowed to undertake at any one time.

(3) Contractors who attain a total prequalification of \$50,000,000 shall be classified as unlimited. Each contractor's prequalification shall be reviewed at least annually; more often if circumstances so warrant.

(4) Qualification ratings shall be based on evaluation of the contractor's:

- (a) experience;
- (b) past performance; and

(c) analysis of certified audited financial statements, including balance sheet, income statements, and changes in financial condition.

(i) Unaudited financial statements accompanied by the company federal income tax return for the same time period may be accepted in lieu of the required certified audited financial statements, however, this shall result in a lower prequalification rating.

(5) Each bid proposal submitted shall include a complete "Status of Work Under Contract" form. The form shall include all work presently the responsibility of said contractor, both in and out of the state of Utah.

(a) Contractors with a prequalification amount classified as unlimited are exempt from this requirement.

(6) This policy shall be administered to ensure adequate competition in bidding for construction contracts.

**KEY: bids, contracts, prequalification**

**Date of Enactment or Last Substantive Amendment: ~~1994~~2006**

**Notice of Continuation: January 18, 2002**

**Authorizing, and Implemented or Interpreted Law: 72-1-102; 72-1-201; 63-56-13(3)**

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**End of the Notices of Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

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## Commerce, Occupational and Professional Licensing

### **R156-9**

#### Funeral Service Licensing Act Rules

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 29175  
FILED: 10/31/2006, 08:53

##### **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 9, provides for the licensure of funeral service director, funeral service apprentice, preneed funeral arrangement provider, and preneed funeral arrangement sales agent. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-9-201(3) provides that the Funeral Service 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 9, with respect to funeral service and preneed funeral arrangement license classifications.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in February 2002, the Division has received no written comments with respect to the rule.

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 9, with respect to funeral service and preneed funeral arrangement license classifications. 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](mailto:ntaxin@utah.gov)

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 10/31/2006



## Commerce, Occupational and Professional Licensing

### **R156-57**

#### Respiratory Care Practices Act Rules

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 29169  
FILED: 10/30/2006, 15:40

##### **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 57, provides for the licensure of respiratory care practitioners. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-

57-3(3) provides that the Respiratory Care 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 57, with respect to respiratory care practitioners.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in January 2002, the Division has received no written comments with respect to the rule.

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 57, with respect to respiratory care practitioners. 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](mailto:ntaxin@utah.gov)

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 10/30/2006

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**Community and Culture, Home Energy  
Assistance Target (HEAT)  
R195-1  
Energy Assistance: General Provisions**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29178  
FILED: 10/31/2006, 17:28

**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: Sections 9-12-101 to 9-12-204 authorize rules including eligibility rules for the Home Energy Assistance Target (HEAT) Program and the utility Moratorium Program for low-income households.

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 were no written comments, positive or negative, received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule must continue through the life of the HEAT Program in order to continue to provide energy assistance for low-income households in Utah.

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

COMMUNITY AND CULTURE  
HOME ENERGY ASSISTANCE TARGET (HEAT)  
Room 500  
324 S STATE ST  
SALT LAKE CITY UT 84111-2388, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Palmer DePaulis, Executive Director

EFFECTIVE: 10/31/2006

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**Education, Administration  
R277-914  
Applied Technology Education (ATE)  
Leadership**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29180  
FILED: 11/01/2006, 10:17

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-15-202(1) directs the Utah State Board of Education to establish minimum standards for applied technology programs in the public education system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it directs Applied Technology College leadership organizations to be fiscally accountable to the Utah State Board of Education, and therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 11/01/2006

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## Regents (Board Of), Administration

# R765-612

## Lender Participation

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29142  
FILED: 10/20/2006, 12:10

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

AUTHORIZE OR REQUIRE THE RULE: Title 53B, Chapter 12: Establishment of a student loan guaranty agency and associated activities allows individual lender participation in the U.S. Department of Education's Federal Family Education Loan Program (FFELP). This rule defines lender eligibility for lenders in Utah who wish to participate in the FFELP.

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 in the past five years from any individual or organization either supporting or opposing this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule provides lenders in Utah, both banks and credit unions, that wish to offer federal student loans to current and prospective customers, an understanding of the definitions and policies that pertain to the participation in the guaranty of such federal student loans through the Utah Higher Education Assistance Authority.

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

REGENTS (BOARD OF)  
ADMINISTRATION  
BOARD OF REGENTS BUILDING, THE GATEWAY  
60 SOUTH 400 WEST  
SALT LAKE CITY UT 84101-1284, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

AUTHORIZED BY: Mark H. Spencer, Associate Commissioner

EFFECTIVE: 10/20/2006

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

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### Natural Resources

#### Wildlife Resources

No. 29165 (filed 10/27/2006 at 4:38 p.m.): R657-49. Big Game Conservation Easements on Former School Trust Lands.

ENACTED OR LAST REVIEWED: 11/15/2001 (No. 24065, NEW, filed 09/20/2001 at 11:32 a.m., published 10/15/2001).

EXTENDED DUE DATE: 03/15/2007

**End of the Notices of Five-Year Review Extensions Section**



## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63-46a-4(9).

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Commerce

#### Occupational and Professional Licensing

No. 28937 (AMD): R156-71. Naturopathic Physician Practice Act Rules.  
Published: September 15, 2006  
Effective: October 26, 2006

#### Real Estate

No. 28901 (AMD): R162-6-1. Improper Practices.  
Published: August 15, 2006  
Effective: October 19, 2006

No. 28902 (AMD): R162-6-2. Standards of Practice.  
Published: August 15, 2006  
Effective: October 19, 2006

No. 28900 (AMD): R162-8-3. School Application for Certification.  
Published: August 15, 2006  
Effective: October 19, 2006

No. 28899 (AMD): R162-9-2. Education Providers.  
Published: August 15, 2006  
Effective: October 19, 2006

No. 28753 (NEW): R162-11. Undivided Fractionalized Long-Term Estates.  
Published: June 15, 2006  
Effective: October 19, 2006

No. 28753 (CPR): R162-11. Undivided Fractionalized Long-Term Estates.  
Published: August 15, 2006  
Effective: October 19, 2006

No. 28979 (AMD): R162-105. Scope of Authority.  
Published: September 15, 2006  
Effective: October 25, 2006

No. 28981 (AMD): R162-208-7. Course Completion Certificate.  
Published: September 15, 2006  
Effective: October 24, 2006

### Corrections

#### Administration

No. 28975 (AMD): R251-113. Distribution of Reimbursement for the Felony Probation Inmate Costs Reimbursement Program/Fund.  
Published: September 15, 2006  
Effective: October 24, 2006

### Crime Victim Reparations

No. 28984 (AMD): R270-1-24. Rent Awards.  
Published: September 15, 2006  
Effective: October 23, 2006

### Education

No. 28987 (R&R): R277-470. Charter Schools.  
Published: September 15, 2006  
Effective: October 24, 2006

No. 28988 (AMD): R277-700. The Elementary and Secondary School Core Curriculum.  
Published: September 15, 2006  
Effective: October 24, 2006

### Health

#### Health Care Financing, Coverage and Reimbursement Policy

No. 28921 (NEW): R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.  
Published: September 1, 2006  
Effective: November 1, 2006

### Human Services

#### Aging and Adult Services

No. 28967 (AMD): R510-200-1. Purpose.  
Published: September 15, 2006  
Effective: October 23, 2006

No. 28968 (AMD): R510-200-2. Definitions.  
Published: September 15, 2006  
Effective: October 23, 2006

No. 28969 (AMD): R510-200-9. Determination of the Responsible Agency for Investigating Particular Cases in Long-Term Care Facilities.  
Published: September 15, 2006  
Effective: October 23, 2006

## NOTICES OF RULE EFFECTIVE DATES

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### Insurance

#### Administration

No. 28768 (NEW): R590-236. HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier.

Published: June 15, 2006

Effective: November 1, 2006

No. 28768 (CPR): R590-236. HIPAA Eligibility Following Receipt of a Certificate of Insurability or Denial by an Individual Carrier.

Published: September 15, 2006

Effective: November 1, 2006

### Natural Resources

#### Wildlife Resources

No. 28945 (AMD): R657-9-7. Return of Swan Harvest and Hunt Information.

Published: September 15, 2006

Effective: October 24, 2006

No. 28943 (AMD): R657-10. Taking Cougar.

Published: September 15, 2006

Effective: October 24, 2006

No. 28944 (AMD): R657-11. Taking Furbearers.

Published: September 15, 2006

Effective: October 24, 2006

No. 28942 (AMD): R657-26. Adjudicative Proceedings for a License, Permit, or Certificate of Registration.

Published: September 15, 2006

Effective: October 24, 2006

### Transportation

#### Preconstruction

No. 28915 (AMD): R930-3-0. Purpose.

Published: September 1, 2006

Effective: October 18, 2006

### Workforce Services

#### Employment Development

No. 28991 (AMD): R986-100-104. Definitions of Terms Used in These Rules.

Published: September 15, 2006

Effective: November 1, 2006

No. 28990 (AMD): R986-200. Family Employment Program.

Published: September 15, 2006

Effective: November 1, 2006

No. 28992 (AMD): R986-400. General Assistance and Working Toward Employment.

Published: September 15, 2006

Effective: November 1, 2006

**End of the Notices of Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2006, including notices of effective date received through November 1, 2006, the effective dates of which are no later than November 15, 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/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Administrative Services</b>					
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	28586	EMR	04/15/2006	2006-8/57
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	28608	AMD	06/01/2006	2006-9/10
R23-1	Procurement of Construction	28609	AMD	06/01/2006	2006-9/3
R23-2	Procurement of Architect-Engineer Services	28607	AMD	06/01/2006	2006-9/12
R23-25	Administrative Rules Adjudicative Proceedings	28993	5YR	09/06/2006	2006-19/126
<u>Finance</u>					
R25-2	Finance Adjudicative Proceedings	29077	5YR	09/25/2006	2006-20/79
R25-5	Payment of Per Diem to Boards	28384	AMD	01/25/2006	2005-24/2
R25-7	Travel-Related Reimbursements for State Employees	28702	AMD	07/01/2006	2006-10/2

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<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
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	28766	AMD	08/02/2006	2006-12/3
R28-2	Surplus Firearms	28496	5YR	02/07/2006	2006-5/47
<u>Information Technology Services</u>					
R29-1	Division of Information Technology Services Adjudicative Proceedings	28788	5YR	06/08/2006	2006-13/61
R29-1	Technology Services Adjudicative Proceedings	28828	NSC	06/22/2006	Not Printed
R29-2	Telecommunications Services and Requirements	28794	NSC	06/22/2006	Not Printed
<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
R35-1	State Records Committee Appeal Hearing Procedures	28776	AMD	08/09/2006	2006-13/4
<u>Risk Management</u>					
R37-1	Risk Management General Rules	28413	AMD	03/31/2006	2006-1/4
R37-4	Adjusted Utah Governmental Immunity Limitations on Judgments	28667	R&R	07/01/2006	2006-10/5
<b>Agriculture and Food</b>					
<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>					
R58-2	Diseases, Inspections and Quarantines	28925	5YR	08/15/2006	2006-17/65
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	28926	5YR	08/15/2006	2006-17/65
R58-4-1	Authority	28972	NSC	09/22/2006	Not Printed
R58-10	Meat and Poultry Inspection	28506	AMD	04/03/2006	2006-5/2
R58-14	Holding Live Raccoons or Coyotes in Captivity	28971	5YR	08/29/2006	2006-18/46
R58-19-1	Authority	29153	NSC	11/08/2006	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Marketing and Development</u>					
R65-7	Horse Racing	28970	5YR	08/29/2006	2006-18/46
R65-8	Management of the Junior Livestock Show Appropriation Authority	28558	5YR	03/16/2006	2006-8/70
R65-8-1	Authority	29154	NSC	11/08/2006	Not Printed
<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
R68-7	Utah Pesticide Control Act	28769	AMD	07/25/2006	2006-12/6
R68-8	Utah Seed Law	28452	5YR	01/09/2006	2006-3/38
R68-16-1	Authority	29155	NSC	11/08/2006	Not Printed
R68-17-1	Authority	29156	NSC	11/08/2006	Not Printed
R68-18	Quarantine Pertaining to Karnal Bunt	28505	5YR	02/10/2006	2006-5/48
R68-18-1	Authority	29157	NSC	11/08/2006	Not Printed
R68-19-1	Authority	29158	NSC	11/08/2006	Not Printed
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	28503	AMD	04/03/2006	2006-5/3
R70-201-1	Authority	29159	NSC	11/08/2006	Not Printed
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
R70-920	Packaging and Labeling of Commodities	28976	5YR	08/29/2006	2006-18/47
R70-920-2	Adopted by Reference	28977	NSC	09/22/2006	Not Printed
R70-930	Method of Sale of Commodities	28974	5YR	08/29/2006	2006-18/47
R70-930-2	Adopted by Reference	28973	NSC	09/22/2006	Not Printed
R70-940	Standards and Testing of Motor Fuel	28978	5YR	08/29/2006	2006-18/48
<b>Alcoholic Beverage Control</b>					
<u>Administration</u>					
R81-1	Scope, Definitions, and General Provisions	28985	5YR	08/31/2006	2006-18/48
R81-1-7	Disciplinary Hearings	28708	AMD	08/25/2006	2006-11/24
R81-2	State Stores	28994	5YR	09/06/2006	2006-19/126
R81-3	Package Agencies	28997	5YR	09/06/2006	2006-19/127
R81-4A	Restaurant Liquor Licenses	28998	5YR	09/06/2006	2006-19/127
R81-5	Private Clubs	28999	5YR	09/07/2006	2006-19/128
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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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Technology Services, Administration	29146	R895-7-4	NSC	11/08/2006	Not Printed
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Environmental Quality, Drinking Water	28421	R309-545-7	AMD	03/08/2006	2006-1/19
<b><u>access to information</u></b>					
Technology Services, Administration	28747	R895-1	NEW	07/25/2006	2006-12/43
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	28808	R277-410-4	AMD	08/08/2006	2006-13/11
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<b><u>administrative procedures</u></b>					
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	28407	R212-4	NSC	01/01/2006	Not Printed
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	28418	R309-405-4	AMD	03/08/2006	2006-1/14
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<b><u>tolls</u></b> Transportation, Program Development	28538	R926-9	NEW	04/20/2006	2006-6/17
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<b><u>traffic noise abatement</u></b> Transportation, Preconstruction	28677	R930-3	AMD	06/22/2006	2006-10/80
	28915	R930-3-0	AMD	10/18/2006	2006-17/49
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	28802	R313-19-34	AMD	08/11/2006	2006-13/20
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	28617	R907-68	AMD	06/01/2006	2006-9/30
	28532	R907-68	AMD	06/01/2006	2006-6/15
Transportation, Motor Carrier, Ports of Entry	28703	R912-8	NEW	06/22/2006	2006-10/78
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