

UTAH STATE BULLETIN

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

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Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Governor's Executive Order 2008-0001: Creating the Public Health Emergency Preparedness Advisory Committee

EXECUTIVE ORDER

Creating the Public Health Emergency Preparedness Advisory Committee

WHEREAS, the Governor's Taskforce on Pandemic Influenza Preparedness has recommended a permanent advisory committee be established;

WHEREAS, the State of Utah needs to be prepared for public health emergencies and establish a process for decision-making during such emergencies that promotes public trust and cooperation with those decisions,

WHEREAS, keeping citizens healthy is a top priority of the State of Utah;

NOW, THEREFORE, I, Jon M. Huntsman, Jr., Governor of the State of Utah, by virtue of the power vested in me by the Constitution and the laws of the State of Utah do hereby order the following:

1. There is created a Public Health Emergency Preparedness Advisory Committee.
2. The committee consists of members appointed by the Governor to a 3 year term, not to exceed 2 terms.
 - a. Members should be selected based on their specific knowledge critical to response in a pandemic or other public health emergency; they shall also be selected to be widely representative of different sectors of society throughout Utah.
3. The committee shall initially:
 - a. Oversee completion of recommendations of the Governor's Taskforce on Pandemic Influenza Preparedness
 - b. Review and assess preparedness in Utah for a pandemic, including potentially reviewing plans or results of assessments or exercises.
 - c. Review and issue recommendations on key decisions and plans
4. After activities in subsection 3 are completed, the committee may make a request to the Governor on other public health emergency preparedness areas the committee would like to review and assess.
5. The committee will not be responsible for operational direction during a pandemic or other public health emergency.
6. The committee should not be expected to coordinate operational response during a pandemic or other public health emergency or to coordinate preparedness activities among state agencies or between state and local agencies.
7. The committee may establish technical advisory groups that work under the overall direction of the Public Health Emergency Preparedness Advisory Committee.
8. The Utah Department of Health shall provide the committee budgetary and staff support as approved by the Executive Director.
9. Members of the Public Health Emergency Preparedness Advisory Committee serve without compensation.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, this 8th day of February, 2008.

(State Seal)

Jon M. Huntsman, Jr.
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2008/0001

Governor's Executive Order 2008-0002: Creating a Board of Advisors for the Refugee Services Office

EXECUTIVE ORDER

Creating a board of advisors for the Refugee Services Office

WHEREAS, there is created in the Department of Workforce Services a Refugee Services Office to assist with the integration of all of the State of Utah's foreign-born refugee newcomers;

WHEREAS, there is a need to address the structural gaps and barriers to successful refugee resettlement;

WHEREAS, for the effective operation of the Refugee Services Office, there is a need to provide service coordination, accountability, advocacy and resource development for essential services to refugees in the State of Utah,

WHEREAS, to effectively represent the interests of refugees to state and local governments and to the private sector;

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

1) Establish a Board of Advisors in the Executive Office of the Department of Community and Culture to provide support and advice to the Refugee Services Office:

- a) The Office of the Governor shall designate the board chair and make appointments to the board;
- b) The chair shall establish the board's agenda and meeting schedule;
- c) The board shall be staffed by the Refugee Services Office;
- d) The membership of the board shall represent key stakeholders in the refugee community, providers, state and local governments, and the community at large;
- e) The Director of the Refugee Services Office shall be an ex officio non-voting member of the board;

f) The board shall, as needed, create subcommittees to further the work of the board and, in particular, to raise private, foundation, and corporate funds to increase the services that are provided to refugees;

g) The board shall not exceed 15 members and shall consist of the following stakeholders, including, but not limited to:
a representative from the Utah Department of Human Services;
a representative from the Utah Department of Health;
a representative from the Salt Lake County government;
a representative from the Utah State Office of Education;
a representative from each of the two resettlement agencies: International Rescue Committee and Catholic Community Services;
a representative from a low-income housing community, serving staggered four year terms;
a representative from the social services community, serving staggered four year terms;
representatives from two refugee mutual assistance associations, serving staggered four year terms;
other stakeholders identified by the Governor, serving staggered four year terms.

2) As appropriate, direct the Board of Advisors to:

a) Educate policy makers and key stakeholders on critical issues included in the Refugee Working Group's report and recommendations.

b) Recommend standards for services to refugee populations in the state and provide recommendations to the State Refugee Services Office;

c) Assess on an annual basis the performances of refugee providers receiving state and federal funding to serve refugee populations;

d) Analyze the efforts by mainstream service providers to serve refugee populations and make appropriate recommendations to increase access to these services;

e) Recommend to the Refugee Services Office and local governments improvements in the service delivery system for refugees;

f) Provide a forum in which statewide refugee issues can be addressed and solutions entertained;

g) Identify service gaps and make recommendations for funding strategies, including legislative funding for refugee services;

h) Promote public awareness of refugee issues, needs and accomplishments;

3) Request the Board of Advisors to make an annual report to the Governor on the status of refugee services, delivered by November 1.

IN WITNESS WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, this 8th day of February, 2008.

(State Seal)

Jon M. Huntsman, Jr.
Governor

Attest:

Gary R. Herbert
Lieutenant Governor

2008/0002

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 16, 2008, 12:00 a.m., and February 1, 2008, 11:59 p.m. are included in this, the February 15, 2008, 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 between paragraphs (· · · · ·) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. 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 March 17, 2008. 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 June 14, 2008, 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.

The Proposed Rules Begin on the Following Page.

**Commerce, Occupational and
Professional Licensing
R156-3a-303
Qualifications for Licensure -
Examination Requirements**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR File No.: 30935
FILED: 01/30/2008, 09:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule amendment is to delete the open book take home law and rule examination. Subsection 58-3a-302(1)(f) allows the division in collaboration with the board to determine the exams that are necessary for licensure. The Architects Licensing Board has recommended this exam is not needed. The change will leave in place the national exam which is provided by the National Council of Architectural Registration Boards (NCARB). The board believes the national exam is sufficient for licensure.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-3a-303(1)(a), the open book take home Utah Law and Rule examination is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 58-3a-101 and 58-3a-303.5 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The proposed amendment will result in minimal costs of approximately \$75 to the division to reprint the rule once the proposed amendment is made effective. Also, as a result of the proposed amendment, division personnel will save some time in processing the examination contained in architect applications. The net cost/saving will be negligible and will be absorbed in the division's existing budget.

❖ **LOCAL GOVERNMENTS:** The proposed amendment does not apply to local governments; therefore, no costs or savings are anticipated. The proposed amendment only applies to applicants for licensure as an architect.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The proposed amendment does not apply to a small business. The proposed amendment only applies to applicants for licensure as an architect. The proposed amendment will result in minor savings of an applicant's time to complete the open book take home examination estimated to be less than one hour per applicant. The exam required a person to look up the answer by reading the appropriate part of the governing statute and rule. The exam basically forced an applicant to read the licensing statute and rule. The division is unable to determine any monetary cost of savings of an applicant's time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment only applies to applicants for licensure as an architect. The proposed amendment will result in minor savings of an applicant's time to complete the open book take home examination estimated to be less than one hour per applicant. The exam required a person to look up the answer by reading the appropriate part of the governing statute and rule. The exam basically forced an applicant to read the licensing statute and rule. The division is unable to determine any monetary cost of savings of an applicant's time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing beyond the cost savings addressed in the rule summary. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dennis Meservy at the above address, by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/17/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/22/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210 (second floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-3a. Architect Licensing Act Rule.
R156-3a-303. Qualifications for Licensure - Examination
Requirements.**

(1) In accordance with Subsections 58-3a-302(1)(f) and 58-3a-302(2)(e), an applicant for licensure as an architect (whether by education and experience or by endorsement) shall submit documentation establishing:

- (a) ~~[a score of 100% on the open book take home Utah Law and Rule Examination; and~~
~~(b)(i) a current NCARB Council Record; or~~
~~(b)(ii) passing scores on all divisions of the ARE as established by the NCARB.~~

(2) An applicant for licensure may apply directly to NCARB to sit for any part of the ARE examination anytime after having completed the education requirements specified in Section R156-3a-301.

KEY: architects, licensing
Date of Enactment or Last Substantive Amendment: ~~December 24, 2007~~ 2008
Notice of Continuation: April 10, 2006
Authorizing, and Implemented or Interpreted Law: 58-3a-101; 58-1-106(1)(a); 58-1-202(1)(a), 58-3a-303.5

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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

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

**Education, Administration
R277-502**

Educator Licensing and Data Retention

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 30944
FILED: 02/01/2008, 11:13**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to align the rule with state law, update language in the rule to ensure compatibility, and to reassign a section to a more appropriate rule.

SUMMARY OF THE RULE OR CHANGE: The amendments revise definitions, clarify licensing terms, provide for a new K-6 license, provide a clear and expedited process for educators with lapsed licenses to renew their licenses and return to the profession, and provide additional updated language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-6-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Any additional costs of programs, activities, and options will be covered by licensing fees.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government including school districts and charter schools. Any costs will be absorbed by Utah State Office of Education licensing or covered by applicant fees.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses and persons other than businesses. These are licenses issued by the state specific to teachers in the public schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Costs of licensing or new licenses will be borne by the applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

**R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.**

A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

B. "Accredited school" for purposes of this rule, means public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

~~[C]~~F. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an ~~[school district]~~LEA. ~~[-A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1G.]~~

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

~~[E]~~H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

[F]I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

[G]J. "License areas of concentration" ~~are~~ means designations to licenses obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle ~~(still valid, but not issued after 1988,~~ 5-9), Secondary (6-12), Administrative/~~Supervisory~~, ~~Applied Technology~~ Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, ~~Speech-Language Pathologist, Speech-Language Technician.~~ License areas of concentration ~~and~~ may also bear endorsements relating to subjects or specific assignments.

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

[I]L. "Professional development plan" means a plan developed by an educator and approved by the educator's supervisor that includes locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

[J]M. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

[K]N. "State Approved Endorsement Program (SAEP)" means a professional development plan on which an educator is working to obtain an endorsement.

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process of criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

~~(3)1)~~ ~~[Employing school districts]~~LEAs and educator preparation institutions shall cooperate in ~~[making special assistance available]~~preparing candidates for the educator Level 1 license[

holders]. The resources of both may be used to assist ~~[those educators experiencing significant problems.~~ The institution in closest proximity to the employing school district is the first choice for district involvement; however, the school district is encouraged to make a cooperative arrangement with the institution from which the educator graduated]candidates in preparation for licensing.

~~(4)2)~~ The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

~~(2)3)~~ The Level 1 license is issued for three years.

(4) An educator shall satisfy all requirements ~~[and criteria]~~ of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(5) An educator shall satisfy all federal requirements for an educator license prior to moving from Level 1 to Level 2.

~~(6)~~ A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing ~~[school district]~~LEA.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience~~[and]~~, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(2) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The Level 2 license may be renewed for successive five year periods consistent with R277-501, Educator Licensing Renewal.

(4) A Level 2 license holder shall satisfy all federal requirements for an educator license holder prior to renewal after June 30, 2006 to remain highly qualified.

C. A Level 3 license may be issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a doctorate in the educator's field of practice.

(1) ~~[#]A~~ Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(2) The Level 3 license may be renewed for successive seven year periods consistent with R277-501.

D. Licenses expire on June 30 of the year ~~[shown on the face of the license]~~of expiration recorded on CACTUS and may be renewed any time after January of that year. Responsibility for securing renewal of the license rests ~~[upon]~~solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

- (1) Early Childhood (K-3);
- (2) Elementary (1-8);

- (3) Elementary (K-6);
~~(3)4~~ Middle (still valid, but not issued after 1988, 5-9);
~~(4)5~~ Secondary (6-12);
~~(5)6~~ Administrative/~~Supervisory~~;
~~(6)7~~ ~~[Applied Technology]~~Career and Technical Education;
~~(7)8~~ School Counselor;
~~(8)9~~ School Psychologist;
~~(9)10~~ School Social Worker;
~~(10)11~~ Special Education (K-12);
~~(11)12~~ Preschool Special Education (Birth-Age 5);
~~(12)13~~ Communication Disorders[-];
 (14) Speech-Language Pathologist;
 (15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed but working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) Letters of Authorization

~~(a) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have not completed requirements for [licensing but are waiting documentation of that completion]areas of concentration or endorsements.~~

~~(b) An approved Letter of Authorization is valid for [a limited period of time]one year and may be renewed for a total of three years.~~

~~(c) Educators working under letters of authorization shall not be considered highly qualified.~~

~~(d) Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing [is]shall be considered under qualified.~~

C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement~~[without a current license]~~ is not valid for employment purposes ~~without a current license.~~

~~[R277-502-6. School Counselor Levels of Licensure.~~

~~There are three levels of licensure for a K-12 school counselor:~~

~~A. School Counselor Professional Educator License Level 1 is a license issued:~~

~~(1) upon completion of an accredited counselor education program; or~~

~~(2) to persons applying for licensure under interstate agreements.~~

~~(3) This license is issued to counselors who are beginning their professional careers who have completed an approved 600-hour field experience (400 hours if the applicant has completed two or more years of successful teaching experience as approved by USOE licensing).~~

~~B. School Counselor Professional Educator License Level 2 is:~~

~~(1) a license issued after satisfaction of all requirements for a Level 1 license and 3 years of successful experience as a school counselor in an accredited school in Utah; and~~

~~(2) is valid for five years.~~

~~C. Counseling Intern Temporary License is based on written recommendation from a USOE accredited program that a candidate:~~

~~(1) is currently enrolled in the program;~~

~~(2) has completed 30 semester hours of course work, including successful completion of a practicum; and~~

~~(3) has skills to work in a school as an intern with supervision from the school setting and from the counselor education program.~~

~~(a) Letters from the accredited program recommending eligible candidates shall be submitted to USOE at the beginning of each school year.~~

~~(b) The Counseling Intern Temporary License is valid for the current year only and is not renewable.~~

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and approval by the Utah Professional Practices Advisory Commission;

(2) Employment by a school district/charter school;

(3) A professional development plan developed jointly by the school principal or charter school director and the returning educator that considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal evaluation process completed within the first 30 days of employment; and

(f) additional necessary professional development for the educator, as determined jointly by the principal/school district and educator.

(4) The plan shall be filed with the USOE;

(5) Pass required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the school district with a trained mentor; and

(7) Successful evaluation of teaching based on school district evaluation system.

B. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A, the employing LEA may recommend reinstatement of licensure at a Level 2 or 3. This license shall be valid for five years.

C. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to a graduate of an educator preparation program from an accredited institution of higher education in another state. [

(1) The institution conducting the teacher preparation program shall be accredited by (NCATE), TEAC or one of the major regional accrediting associations.]

(2) If the applicant has [one or more]three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued [following satisfaction of the requirements of R277-522—]upon the recommendation of the employing Utah [school district]LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of

R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Computer-Aided Credentials of Teachers in Utah Schools (CACTUS).

A. CACTUS maintains public ~~and~~ protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

~~(1) Public information includes name, educational qualifications, degrees earned, and current assignment (if applicable).~~

~~(2) Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.~~

B. A CACTUS file ~~is~~ shall be opened on a licensed Utah educator when:

(1) the individual ~~'s fingerprint cards are submitted to the USOE~~ initiates a USOE background check, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized ~~school district~~ LEA staff may change demographic data.

(2) Authorized USOE staff may change licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing ~~school district~~ LEA staff may update data on ~~work experience~~ educator assignments for the current school year only.

D. A ~~L~~ licensed individual[s] may view his own personal data ~~if registered with the Utah Education Network (UEN)~~. An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual may contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his personal file.

E. Individuals currently employed by public ~~or~~ private ~~or~~ ~~parochial~~ schools under letters of authorization or as interns are included in CACTUS. ~~Interns may be included on CACTUS.~~

F. Individuals working in LEAs as student teachers are included in CACTUS.

~~F~~G. Designated individuals have access to CACTUS data:

~~(4) A licensed individual may view his own file.~~ (1) Training shall be provided to designated individuals prior to granting access.

(2) ~~Designated~~ Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, ~~designated district or school~~ authorized LEA staff members may access data on individuals employed by their own ~~districts~~ LEA or data on licensed individuals ~~who are not currently employed by public schools, some private and parochial schools and ATCs~~ who do not have a current assignment in CACTUS.

(4) ~~Designated individuals~~ Authorized LEA staff may also view specific limited information on job applicants if the applicant

has provided ~~a school district~~ the LEA with a ~~Social Security Number~~ CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data consistent with Section 63-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE.

R277-502-9. Professional Educator License Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs of testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing ~~school district~~ LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive;

(3) Differentiated fees shall be set consistent with the time and resources required to adequately review all applicants for educator licenses.

E. Costs may include an expediting fee if an applicant seeks to have a license application reviewed before applications received earlier.

KEY: professional competency, educator licensing

Date of Enactment or Last Substantive Amendment: ~~July 16, 2004~~ 2008

Notice of Continuation: September 6, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401(3)



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-305
Resources

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 30945
FILED: 02/01/2008, 12:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify the spousal impoverishment resource assessment rules governing institutionalized married persons, to make changes to trust provisions for excluded trusts for disabled persons, to add provisions concerning the treatment of annuities in the

determination of countable resources and transfers of assets, to clarify the time period the individual has to modify existing annuities to name the state as preferred remainder beneficiary, and to modify the process for undue hardship determinations due to a transfer of asset penalty.

SUMMARY OF THE RULE OR CHANGE: This change clarifies Medicaid policy for the division of assets among institutionalized and community spouses, clarifies policy for the transfer of resources from the institutionalized spouse to the community spouse, clarifies rules for excluded trusts for disabled persons in either individual special needs trusts or in pooled trusts, clarifies that annuities must meet the provisions of Subsection 1917(c) of the Social Security Act to have fair market value, clarifies that the state gives individuals a period of time to bring annuities into compliance and specifies the consequences of noncompliance, includes a provision to count annuities that an individual or spouse owns as an available resource unless the annuity meets certain criteria defined under the Internal Revenue Code, and modifies the requirements for requesting an undue hardship in the case of a transfer of asset penalty.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The department anticipates a savings as a result of these changes. The first savings will be in nursing home costs for people who have annuities valued at more than the allowed resource limits. While it is difficult to assess exactly how many individuals may not be eligible based on these changes, the department estimates an annual savings of \$644,700 for nursing home care, of which \$193,400 will go the General Fund, and \$451,300 will be in federal dollars. The changes in trust rules may increase the amount of funds remaining in special needs and pooled trusts that the state may recover under the repayment agreement, but the state cannot predict what it will recoup.
- ❖ **LOCAL GOVERNMENTS:** There is no impact on local governments because local governments do not determine Medicaid eligibility and they are not Medicaid providers.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Individuals who own annuities may be ineligible for months or even years depending on the value of the annuities they own. This will cause them to pay for their own nursing home care. Based on the estimated savings to the state and the difference in private pay costs, individuals denied Medicaid could incur costs around \$936,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: An individual who cannot receive Medicaid because his own annuities cause him to fail the resource limit will have to pay for his own medical costs. It is difficult to determine the cost he may incur for noninstitutional care, but the estimate for institutional care is around \$6,000 a month for private care. A disabled individual who has a special needs trust or pooled trust will incur no additional costs because the changes primarily affect the repayment requirement that takes effect when the person dies. There are no compliance costs for any other persons or small businesses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any fiscal impact maintaining the cost of long term care with the individual when resources exist to pay for that care is appropriate. Businesses that serve these individuals will be paid privately until the resources are exhausted. 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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-305. Resources.

R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) This section establishes the standards for the treatment of resources for married couples when one spouse is institutionalized and the other spouse is not institutionalized.

(2) To determine the value of the total joint resources of an institutionalized individual and a community spouse, and the spousal assessed share, the provisions of 42 U.S.C. 1396r-5, which are commonly known as the spousal impoverishment rules, shall apply.

~~—(2) To determine the countable resources of an institutionalized individual who has a community spouse, the Department adopts Section 1924(a), (c) and (f) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts section 6013 of Pub. L. 109-171 which is incorporated by reference.~~ Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The resource limit for an institutionalized individual is \$2,000.

(4) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the Medicaid eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-3(5) as of the first continuous period of institutionalization or application for Medicaid home and community-based waiver services. The Medicaid eligibility agency

shall notify the requester of the results of the assessment. The individual does not have to apply for Medicaid or pay a fee for the assessment.

(5) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The resources counted for the assessment are those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.

(a) The community spouse's assessed share of resources is one-half of the total resources. However, the protected resource allowance for the community spouse may be less than the assessed share.

(b) Upon application for Medicaid, the Medicaid eligibility agency sets the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.

(c) The Medicaid eligibility agency sets the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions.

(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard.

(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard.

(iii) The Department uses the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.

(d) In making a decision to modify the community spouse's protected share of resources, the Department follows the "income first" rule found at 42 U.S.C. 1396r-5(d)(6).

(6) The Department counts any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.

(7) After the Medicaid eligibility agency establishes eligibility for the institutionalized spouse, the Department allows a protected period lasting until the time of the next regularly scheduled eligibility redetermination for an institutionalized individual to transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit.

(8) The Department does not count resources held in the name of the community spouse as available to the institutionalized spouse beginning the month after the month in which the Medicaid eligibility agency establishes eligibility.

(4) If an individual [client] is otherwise eligible for institutional Medicaid, the Department does not count the community spouse's resources as available to the institutionalized individual [but is unable to comply with spousal impoverishment rules and claims undue hardship] because of an uncooperative spouse or because the spouse cannot be located [the client may obtain institutional Medicaid by assigning support rights to the State of Utah] if all of the following criteria are met: [-

(5) "Undue hardship" in regard to counting a spouse's resources as available to the institutionalized client means:]

(a) The [client] individual assigns support rights to the State.

(b) The [client] individual will not be able to get the medical care needed without Medicaid.

(c) The [client] individual is at risk of death or permanent disability without institutional care.]

(6) The agency will determine the client's eligibility for institutional Medicaid without regard to the spouse's resources if both of the following conditions are met:

(a) The spouse cannot be located or will not provide information needed to determine eligibility.

(b) The client meets the undue hardship criteria including assigning support rights to the State.

(7) The assessed spousal share of resources shall not be less than the minimum amount nor more than the maximum amount mandated by section 1924(f) of the Compilation of the Social Security Laws in effect January 1, 1999.

(8) Any resource owned by the community spouse in excess of the assessed spousal share is counted to determine the institutionalized client's initial Medicaid eligibility.

(9) A protected period, after eligibility is established, lasting until the time of the next regularly scheduled eligibility redetermination is allowed for an institutionalized client to transfer resources to the community spouse.

(10) After eligibility is established for the institutionalized client, those resources held in the name of the community spouse will not be considered available to the institutionalized client to determine the countable resources of the institutionalized client.]

R414-305-4. [Medicaid Qualifying] Treatment of Trusts.

[The Department adopts Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.] This section defines requirements for the treatment of assets held in a trust to determine eligibility for Medicaid. The Department applies all provisions of 42 U.S.C. 1396p(d) dealing with trust assets in determining Medicaid eligibility. This section provides additional provisions for particular types of trusts.

(1) Medicaid Qualifying Trusts established before August 11, 1993. The Department applies the criteria in Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., in determining the availability of trusts established before August 11, 1993. This section of the Social Security Act was repealed in 1993, but the provisions still apply to trusts created before the date it was repealed. The requirements of that section are as follows; however, if there is a conflict between the 1993 provisions of Section 1902(k) and the provisions of Subsections R414-305-4(1)(a), (b), and (c), the 1993 provisions of Section 1902(k) control.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of such payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the applicant or recipient who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for such individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or

received by the beneficiary. It does not matter whether the trust is irrevocable nor whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) Trust for a Disabled Person under Age 65 established in compliance with 42 U.S.C. 1396p(d)(4)(A). These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust complying with the provisions in Subsection R414-305-4(2) and (4) do not count as available resources.

(a) The individual trust beneficiary must meet the disability criteria found in 42 U.S.C. 1382c(a)(3). The trust must be established and assets transferred to the trust before the disabled individual reaches age 65.

(b) The trust must be established solely for the benefit of the disabled individual by a parent, grandparent, legal guardian of the individual, or the court.

(c) The trust may only contain the assets of the disabled individual. The Department treats any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. Such additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(d) The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

(e) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(f) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

(g) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(h) The Department continues to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the Department treats the transfer as a transfer of resources for less than fair market value which may create a period of ineligibility for certain Medicaid services.

(i) A trust that provides benefits to other persons is not an individual special needs trust and does not meet the criteria to be excluded from resources.

(j) A corporate trustee may charge a reasonable fee for services.

(k) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(l) Additional trusts cannot be created within the special needs trust.

(3) Pooled Trust for Disabled Individuals. A pooled trust is a specific trust for disabled individuals established pursuant to 42 U.S.C. 1396p(d)(4)(C) that meets all of the following conditions.

(a) The trust contains the assets of disabled individuals.

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents.

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the Department treats such assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated prior to the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50 percent of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that such retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-4(2) and (3).

(a) No expenditures may be made after the death of the beneficiary prior to repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust.

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share.

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the Medicaid eligibility agency.

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual.

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary.

(ii) The Department treats any provision or action that does or will divert payments or principal from such annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary.

(e) The Department counts cash distributions from the trust as income in the month received.

(f) The Department counts retained distributed amounts as resources beginning the month following the month such amounts are distributed. The Department applies the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within 10 days of receipt. The Department excludes assets purchased with trust funds if the trust retains ownership.

(g) The Department counts distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid.

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition.

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The Medicaid eligibility agency may require a statement of medical need for such services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the Medicaid eligibility agency may require verification of the person's ability to carry out the needed services.

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically-necessary attendant.

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the Medicaid eligibility agency upon request or upon any change of trustee.

(5) Assets held in a pooled trust complying with the provisions in Subsection R414-305-4(3) and (4) are not counted as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community based services under one of the waiver programs.

R414-305-6. Transfer of Resources for Institutional Medicaid.

(1) This section establishes the standards for the treatment of transfers of assets for less than fair market value to determine eligibility for nursing home or other long-term care services under a home and community based services waiver.

(2) ~~[The Department adopts Subsection 1917(e) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts sections 6011, 6012, and 6016 of Pub. L. 109-171 which are incorporated by reference.]~~ The Department applies the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a sanction period applies for a transfer of assets for less than fair market value. In so far as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) If an individual or the individual's spouse transfers the home or life estate or any other asset on or after the look-back date based on an application for long-term care Medicaid services, the transfer requirements of ~~[Section 1917(e) of the Compilation of the Social Security Act]~~ 42 U.S.C. 1396p(c) and (e) apply.

(4) If an individual or the individual's spouse transfers assets in more than one month on or after February 8, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the sanction period. The Department applies partial month sanctions for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(5) In accordance with 42 U.S.C. 1396p(c), the sanction period for a transfer of assets that occurs on or after February 8, 2006, begins the first day of the month during or after which assets were transferred or the date on which the individual is eligible for Medicaid coverage and would otherwise be receiving institutional level care based on an approved application for Medicaid but for the application of the sanction period, whichever is later.

(a) If a previous sanction period is already in effect on the date the new sanction period would begin, the new sanction period begins immediately after the previous one ends.

(b) Sanction periods are applied consecutively so that they do not overlap.

(6) If an individual or spouse transfers assets in more than one month before February 8, 2006, the uncompensated value of all transfers that occurred in each month are combined to determine the sanction period. The Department repeats this calculation for each month during which transfers occurred.

(a) For assets transferred before February 8, 2006, the sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction period ends.

(b) If the total value of assets transferred in one month does not exceed the average private pay rate and the transfer occurred before February 8, 2006, the Department does not apply partial month sanctions.

(5)7 If assets are transferred during any sanction period, the sanction period for those transfers will not begin until the previous sanction has expired.

(6)8 If a transfer occurs, or the Medicaid eligibility agency discovers an unreported transfer, after an individual has been approved for Medicaid for nursing home or home and community based services, the sanction begins on the first day of the month after the month the asset is transferred.

(7)9 The statewide average private-pay rate for nursing home care in Utah used to calculate the sanction period for transfers is \$4,526 per month.

(8)10 To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision, [except for exempt]An excluded trust[s] established under [section 1917(d) of the Compilation of the Social Security Laws, January 1, 1999 ed.]42 U.S.C. 1396p(d)(4), that [provide for repayment of the state Medicaid agency or provide for a pooled trust to retain a portion of the remainder]meets the criteria in Section R414-305-4 does not have to meet the actuarially sound test.

(9)11 The Department shall not impose a [No] sanction [is imposed when] if the total value of a whole life insurance policy is:

(a) irrevocably assigned to the state; and

(b) the recipient is the owner of and the insured in the policy; and

(c) no further premium payments are necessary for the policy to remain in effect.

(d) At the time of the client's death, the state shall distribute the benefits of the policy as follows:

(a)i Up to \$7,000 can be distributed to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and [for] the burial and funeral funds for the client can [-] not exceed \$7,000.

(b)ii An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

(c)iii Any amount remaining after payments are made as defined in [a-]Subsection R414-305-6(11)(d)(i) and [b-]Subsection R414-305-6(11)(d)(ii) will be made to a remainder beneficiary named by the client.

(10)12 If the [agency]Medicaid eligibility agency determines that a sanction period applies for an otherwise eligible institutionalized person, the [agency]Medicaid eligibility agency shall notify the individual that [the individual is ineligible]the Department will not pay the costs for nursing home or other long-term care services because of the sanction. The notice shall include when the sanction period begins and ends. The individual may

request a waiver of the sanction period based on undue hardship. The individual must send a written request for a waiver of the sanction period due to undue hardship to the [agency]Medicaid eligibility agency within 30 days [after]of the [mailing-]date printed on[of] the sanction notice. The request must include an explanation of why the individual believes undue hardship exists. The State will make a decision on the undue hardship request within 30 days of receipt of the request.

(11)13 [Clients that]An individual who claims an undue hardship as a result of a sanction period for a transfer of resources must meet both of the following conditions:

(a) The [client]individual or the person who transferred the resources [has exhausted all]cannot access the asset immediately; however, the Department requires the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource.

(i) [It is considered]The State may determine it is unreasonable to require the client to take action if a knowledgeable source confirms based on facts showing that it is doubtful those efforts will succeed.

(ii) [It]The State may determine that it is unreasonable to require the client to take action based on evidence that it would be more costly than the value of the resource, and

(b) Application of the sanction for a transfer of resources would deprive the [client]individual of medical care such that the [client]individual's life or health would be endangered, or would deprive the [client]individual of food, clothing, shelter or other necessities of life.

(14) If the State waives the sanction period based on undue hardship, the Medicaid eligibility agency will notify the individual. The Department shall provide Medicaid coverage on the condition that the individual take all reasonable steps to regain the transferred assets. The Medicaid eligibility agency will notify the individual of the date the individual must provide verifications of the steps taken. The individual must, within the time frames set by the Medicaid eligibility agency, verify to the Medicaid eligibility agency that individual has taken all reasonable actions. The State shall review the undue hardship waiver and the actions the individual has taken to try to regain the transferred assets. The time period for the review shall not exceed six months. Upon such review, the State will decide if:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the Medicaid eligibility agency will notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps, they have proven unsuccessful and additional steps will likely be unsuccessful, in which case the Medicaid eligibility agency will notify the individual that no further actions are required and if the individual continues to meet eligibility criteria, the Department will not apply the sanction period, or

(c) The individual has not taken all reasonable steps, in which case the Department will discontinue the undue hardship waiver, the sanction period will then be applied and the individual will be responsible to repay Medicaid for services and benefits received during the months the undue hardship waiver was in place.

(15) Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the State may determine that the individual cannot recover or regain the transferred

resource. If the State decides that the assets cannot be recovered and that applying the sanction will result in undue hardship, the Department will not apply a sanction period or will end a sanction period that has already begun.

(16) The Department bases its decision that undue hardship exists upon the [client's] medical condition and the financial situation of the [client] individual. The Department will consider State compares the income and resources of the [client] individual, [client] individual's spouse, and parents of an unemancipated [client] individual to the cost of providing medical care and daily living expenses to decide if the financial situation creates an undue hardship. The [agency] Medicaid eligibility agency shall send a written notice of its decision on the undue hardship request. The [client] individual has 90 days from the date [of mailing of] printed on the notice of decision [concerning the request for an undue hardship waiver] that is mailed to the individual to file a request for a fair hearing.

(17) The portion of an irrevocable burial trust that exceeds \$7,000 is considered a transfer of resources. The Department deducts the value of any fully paid burial plot, as defined in R414-305-1(3)(a), [shall be deducted] from such burial trust first before determining the amount transferred.

(14) If more than one transfer has occurred and the sanction periods would overlap, the sanctions will be applied consecutively so that they do not overlap. If a resource was transferred before February 8, 2006, the sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction ends.

R414-305-9. Treatment of Annuities.

This section defines how annuities are treated in the determination of eligibility for Medicaid.

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased on or after February 8, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) applies. The Department treats annuities purchased on or after February 8, 2006 that do not meet the requirements of 42 U.S.C. 1396p(c) as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-9(4), annuities in which the individual, the individual's spouse or a minor individual's parent has an interest are counted as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The Department presumes that a market exists that will purchase annuities or the stream of income from annuities, and therefore, they are available resources. The individual can rebut the presumption that the annuity can be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing annuities or the revenue stream from annuities, in which case, the Department will not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category Medicaid, the Department excludes an annuity from countable resources in the form of the periodic payment if it meets the requirements of this subsection (4). For Family-Related Medicaid programs, all annuities are countable resources if the

individual can access the funds, even if the annuities qualify as retirement funds or plans.

(a) The annuity is either an individual retirement annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes such annuities on or after February 8, 2006, then the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) Annuities purchased after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the Medicaid eligibility agency that the change in beneficiary has been made by the date requested by the Medicaid eligibility agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the Department applies the applicable sanction period. If the Medicaid eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the sanction period will begin effective the day after the closure date.

(6) The Department treats an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. Such actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(7) If a sanction for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity to name the State as the preferred remainder beneficiary of the annuity, the sanction for a transfer will not end until the date such change of beneficiary has been completed and verified to the Medicaid eligibility agency. The sanction period will not be rescinded.

(8) If all information about annuities the individual or spouse has an interest in is not provided by the requested due date, the Medicaid eligibility agency will deny the application. The individual may reapply, but the original application date will not be protected.

(9) The issuer of the annuity must inform the Medicaid eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity must inform the State if a surviving spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the Medicaid agency.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 25, 2006~~ **2008**

Notice of Continuation: January 31, 2008

Authorizing, and Implemented or Interpreted Law: 26-18



**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-308-7
Change Reporting and Benefit
Changes**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30927

FILED: 01/28/2008, 10:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with Subsection 26-18-3(2), this amendment is necessary to place federal Medicaid policy into rule and reflects ongoing applications. The change, therefore, requires the agency to provide ten-day notice to institutionalized and noninstitutionalized clients when changing their benefits.

SUMMARY OF THE RULE OR CHANGE: This change removes language that previously allowed the agency to modify benefits for institutionalized individuals without sending ten-day notice. Ten-day notice now applies to all Medicaid recipients, and complies with federal Medicaid notice requirements that apply equally to institutionalized and noninstitutionalized clients.

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 this change simply implements ongoing policy into rule in accordance with Subsection 26-18-3(2).

❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not determine Medicaid eligibility and they are not Medicaid providers.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no impact to other persons and small businesses because this change simply implements ongoing policy into rule in accordance with Subsection 26-18-3(2).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change simply implements ongoing policy into rule in accordance with Subsection 26-18-3(2).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change giving additional notice consistent with the requirements of federal law, is not expected to have a negative 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 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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-308. Application, Eligibility Determinations and Improper Medical Assistance.

R414-308-7. Change Reporting and Benefit Changes.

(1) A client must report to the agency reportable changes in the client's circumstances. Reportable changes are defined in R414-301-2.

(a) The due date for reporting changes is 5:00 p.m. on the 10th calendar day after the client learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income the client receives, the due date for reporting the income change is 5:00 p.m. on the day that is ten calendar days after the date the client receives such income.

(c) The due date for providing verifications of changes is 5:00 p.m. on the date the agency sets as the due date in a written notice to the client.

(2) The agency may receive information from credible sources other than the client such as computer income matches, and from anonymous citizen reports. If the agency receives information from sources other than the client that may affect the client's eligibility, the agency will verify the information as needed depending on the source of information before using the information to change the client's eligibility for medical assistance. Information from citizen reports must always be verified by other reliable proofs.

(3) The date of report is the date the client reports the change to the agency by 5:00 p.m. on a business day by phone, by mail, by fax transmission or in person, or the date the agency receives the information from another source.

(4) If the agency needs verification of the reported change from the client, the agency requests it in writing and provides at least ten calendar days for the client to respond.

(5) A client who provides change reports, forms or verifications by 5:00 p.m. on the due date has provided the information on time.

(6)(a) If the reported information causes an increase in a client's benefits and the agency requests verification, the increase in benefits is effective the first day of the month following:

(i) the date of the report if the agency receives verifications within ten days of the request; or

(ii) the date the verifications are received if verifications are received more than ten days after the date of the request.

(b) The agency cannot increase benefits if the agency does not receive requested verifications.

(7) If the reported information causes a decrease in the client's benefits, the agency makes changes as follows:

(a) If the agency has sufficient information to adjust benefits, the change is effective the first day of the month after the month in which the agency sends proper notice of the decrease, regardless of whether verifications have been received.

(b) If the agency does not have sufficient information to adjust benefits, the agency requests verifications from the client. The due date is at least 10 days from the date of the request.

(i) Upon receiving the verifications, the agency adjusts benefits effective the first day of the month following the month in which the agency can send proper notice.

(ii) If the verifications are not returned on time, the agency discontinues benefits for the affected individuals effective the end of the month in which the agency can send proper notice.

(8) Any time the agency requests verifications to determine or redetermine eligibility for an individual or a household, the agency may discontinue benefits if all required factors of eligibility are not verified by the due date. If a change does not affect all household members and verifications are not provided, the agency discontinues benefits only for the individual or individuals affected by the change.

(9) If a client fails to timely report a change or return verifications or forms by the due date, the client must repay all services and benefits paid by the Department for which the client was ineligible.

(10) If a due date falls on a weekend or holiday, the due date will be 5:00 p.m. on the first business day immediately after the due date. [

—(11) Notwithstanding the provisions of subsections (6) and (7), changes affecting an institutionalized client's eligibility are effective as of the date of the change.]

KEY: public assistance programs, application, eligibility, Medicaid

Date of Enactment or Last Substantive Amendment: [April 1, 2007] 2008

Notice of Continuation: January 31, 2003

Authorizing, and Implemented or Interpreted Law: 26-18



Health, Health Systems Improvement, Licensing **R432-270-10** Admissions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30946

FILED: 02/01/2008, 14:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to allow more hospice residents to live in Assisted Living Facilities and to establish specific requirements for hospice residents in Type I assisted living facilities.

SUMMARY OF THE RULE OR CHANGE: This change will allow more than 25% of the residents of a Type II Assisted Living Facility to receive hospice services, and eliminates the need to request rule variances for each resident in excess of 25% of the census. It establishes specific worker to hospice resident ratio requirements in Type I Assisted Living Facilities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-21-5

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Aggregate cost saving to the state budget will be approximately \$280.

❖ **LOCAL GOVERNMENTS:** No impact, since local governments do not operate assisted living facilities and are not involved in the enforcement of the rule.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** In state fiscal year 2007, small businesses made a total of 28 hospice census variance requests. These variance requests are eliminated by this rule. Facilities which are small businesses will save an aggregate total of approximately \$350. No "persons other than small businesses" are impacted as only business entities are licensed as Assisted Living Facilities. Residents in assisted living facilities may save money because they can stay in an assisted living facility instead of moving to a nursing home; however, the number of these residents is impossible to calculate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the rule adopts the same requirements as were made on most prior variances. It is difficult to estimate how many Type I assisted living facilities may choose to retain a hospice resident who is no longer able to independently evacuate the facility. Some Type I facilities may already have sufficient workers to meet the requirement. Those that do not have sufficient workers will likely transfer the resident to a more appropriate facility. The numerous variables make it impossible to estimate an impact on single facilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule adopts the standards that had governed a variance process in the past. Business will no longer need to apply for a variance, thus a small savings may accrue to those facilities. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
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:

Angela Anderson or Allan Elkins at the above address, by phone at 801-538-6450 or 801-538-6595, by FAX at 801-538-6163 or 801-538-6163, or by Internet E-mail at angelaanderson@utah.gov or aelkins@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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R432. Health, Health Systems Improvement, Licensing.

R432-270. Assisted Living Facilities.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) The facility shall accept and retain only residents who meet the following criteria:

(a) Residents admitted to a Type I facility shall meet the following criteria before being admitted:

(i) be ambulatory or mobile and be capable of taking life saving action in an emergency;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living; and

(iv) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(b) Residents admitted to a Type II facility may be independent and semi-independent, but shall not be dependent.

(5) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others; or

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital or long-term nursing care.

(6) A Type I facility may accept or retain residents who:

(a) do not require significant assistance during night sleeping hours;

(b) are able to take life saving action in an emergency without the assistance of another person; and

(c) do not require significant assistance from staff or others with more than two ADL's.

(7) A Type II facility may accept or retain residents who require significant assistance from staff or others in more than two ADL's, provided the staffing level and coordinated supportive health and social services meet the needs of the resident.

(8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(9) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) ~~[hospice residents comprise no more than 25 percent of the facility's resident census.]~~residents on hospice services must meet retention criteria for a type I assisted living residence;

(b) the facility keeps a copy of the physician's diagnosis and orders for care;

(c) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

~~[(d) if a resident is admitted to a hospice program and is no longer capable of exiting the facility without assistance and the facility wants to retain the resident in the facility, the facility must:~~

~~— (i) submit a Request for Agency Action Variance Application to the Department; and~~

~~— (ii) ensure that the an individual capable of assisting the resident to exit the facility in an emergency is with the resident 24 hours a day, seven days a week.](d) if a hospice resident is no longer capable to exit the facility without assistance, the facility may retain resident on the following conditions:~~

~~— (i) the facility must assign a worker solely to the resident;~~

~~— (ii) the worker must be capable to assist the resident to exit the building in an emergency;~~

~~— (iii) an assigned worker must be available on site to the resident 24 hours a day, seven days a week; and~~

~~— (iv) all such hospice residents comprise no more than 25 percent of the facility's resident census.~~

(10) A type II assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:]

~~— (a) hospice residents comprise no more than 25 percent of the facility's resident census.]~~

~~[(b)](a) the facility keeps a copy of the physician's diagnosis and orders for care;~~

~~[(c)](b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and~~

~~[(d)](c) if a resident becomes dependent while on hospice care and the facility wants to retain the resident in the facility, the facility must:~~

~~(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and~~

~~(ii) integrate the emergency plan into the resident's service plan.~~

KEY: health facilities

Date of Enactment or Last Substantive Amendment: ~~May 10, 2005~~ 2008

Notice of Continuation: January 31, 2005

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-1



Labor Commission, Antidiscrimination and Labor, Labor

R610-2-6

Filing Procedure and Commencement of Agency Action

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30942

FILED: 01/31/2008, 14:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to allow the Labor Commission's Antidiscrimination and Labor Division (UALD) to accept claims regarding the employment of minors that have been signed but not notarized, as well as claims signed by authorized agents of the claimants.

SUMMARY OF THE RULE OR CHANGE: The rule removes the existing rule's requirement that claims must be notarized and adds a provision allowing authorized agents to sign for a claimant.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-23-101 et seq., 34-28-1 et seq., 34-40-101 et seq., and 63-46b-1 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Because this rule does not impose any additional requirements, it will neither increase UALD's costs of administering the Employment of Minors Act nor impose any additional compliance costs on the State of Utah in its capacity as an employer. Consequently, the rule amendment will not result in any costs or savings to the state budget.

❖ **LOCAL GOVERNMENTS:** Because this rule amendment does not impose any additional requirements, it will not result in any additional compliance costs for local government and will not result in any costs or savings to local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Because this rule amendment does not impose any additional requirements, it will not result in any additional compliance costs for small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By eliminating the current notarization requirement and adding the provision for signature by authorized agents, the proposed amendment will eliminate the need for claimants to pay a notary fee, thereby reducing compliance costs for claimants. No other person are affected by the amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment simplifies the claim filing process for employees. The amendment does not change existing requirements for employers. Consequently, the amendment will have no fiscal impact on businesses. Sherrie Hayashi, Commissioner

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

**LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR, LABOR**

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:

Heather Morrison or Brent Asay at the above address, by phone at 801-530-6921 or 801-530-6802, by FAX at 801-530-7601 or 801-530-7601, or by Internet E-mail at hmorrison@utah.gov or basay@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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R610. Labor Commission, Antidiscrimination and Labor, Labor, R610-2. Employment of Minors.

R610-2-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve an alleged violation of Utah statutes or rules regarding employment of minors is accomplished by the filing of a complaint or by a notice of agency action filed by the Division at its discretion.

A. The alleged violation shall be filed in writing by the complainant or an authorized representative of the complainant on a form provided by the Division. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63-46b-3(2). The complaint shall include the complainant's name and address, the defendant's name and address, a brief and concise statement of the complaint or allegation, and the complainant's or his authorized representative's ~~notarized~~ signature.

1. Upon receipt of a complaint, the Division shall enter its receipt and assign a complaint number.

2. The Division may telephone the Defendant and attempt to resolve the complaint.

3. When a rapid resolution is not effected, the Division shall mail a copy of the complaint and a blank answer form together with an accompanying agency cover letter.

4. The Defendant shall have ten working days from the date of the letter to submit an answer to such complaint.

5. The Defendant's answer shall be mailed to the Complainant who may submit an answer within ten working days.

6. Upon receiving a third complaint against an employer within a 12 month period, the Division shall invoke the penalty provision pursuant to Section 34-23-402, and notify the Defendant of the penalty at the time of notice under Subsection A.3.

B. The Division may at its discretion bring an agency action to determine any violation of any statute or rule pertaining to employment of minors, or any appropriate penalties, wages, or other enforcement relief. Commencement of an adjudicative proceeding is accomplished by a notice of agency action filed by the Division.

C. An adjudicative proceeding initiated pursuant to Subsection A. or B. is designated as an informal adjudicative proceeding and shall be conducted informally.

D. An informal adjudicative proceeding may be converted to a formal adjudicative proceeding pursuant to Subsection 63-46b-4(3).

KEY: wages, minors, labor, time

Date of Enactment or Last Substantive Amendment: ~~September 3, 1997~~ **2008**

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63-46b-1 et seq.



**Labor Commission, Antidiscrimination
and Labor, Labor**

R610-3-4

**Filing Procedure and Commencement
of Agency Action**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30941

FILED: 01/31/2008, 14:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to allow the Labor Commission's Antidiscrimination and Labor Division (UALD) to accept wage claims that have been signed but not notarized, as well as wage claims that have been signed by an authorized agent of the claimant.

SUMMARY OF THE RULE OR CHANGE: The rule removes the existing rule's requirement that wage claims must be notarized. It also adds a provision allowing authorized agents to sign for the claimant.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-23-101 et seq., 34-28-1 et seq., 34-40-101 et seq., and 63-46b-1 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Because this rule does not impose any additional requirements, it will neither increase UALD's costs of administering the Payment of Wages Act nor impose any additional compliance costs on the State of Utah in its capacity as an employer. Consequently, the rule amendment will not result in any costs or savings to the state budget.

❖ **LOCAL GOVERNMENTS:** Because this rule amendment does not impose any additional requirements, it will not result in any additional compliance costs for local government and will not result in any costs or savings to local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Because this rule amendment does not impose any additional requirements, it will not result in any additional compliance costs or savings for small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By eliminating the current notarization requirement and adding the provision for a signature by an authorized agent, the proposed amendment will eliminate the need for claimants to pay a notary fee, thereby reducing compliance costs for claimants. No other persons are affected by the amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment simplifies the wage claim filing process for employees. The amendment does not change existing requirements for employers. Consequently, the amendment will have no fiscal impact on businesses. Sherrie Hayashi, Commissioner

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR, LABOR
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:

Heather Morrison or Brent Asay at the above address, by phone at 801-530-6921 or 801-530-6802, by FAX at 801-530-7601 or 801-530-7601, or by Internet E-mail at hmorrison@utah.gov or basay@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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-3. Filing, Investigation, and Resolution of Wage Claims.
R610-3-4. Filing Procedure and Commencement of Agency Action.**

A. For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve a claim for wages is accomplished by the wage claimant filing a wage claim assignment form. The wage claim assignment form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Section 63-46b-3(2).

B. An employee who is denied full payment of wages due or is affected or aggrieved by a violation of a statutory provision may file a claim with the Division on a form provided by the Division for that purpose.

1. Besides amounts due an employee for labor or services on a time, task, piece, commission, or other reasonable method of calculating the amount, wages also includes the following items, if due

under an agreement with the employer or under a policy of the employer:

- a. vacation;
- b. holiday;
- c. sick leave;
- d. paid time off; and
- e. severance payments and bonuses.

C. The claim shall include the Claimant's name and address, the Defendant's name and address, a brief and concise statement of the claims, complaints, or allegations, the amount of money which is alleged to be due the Claimant and the Claimant's signature ~~notarized before a notary public~~ or the signature of the Claimant's authorized representative.

D. Upon receipt of a claim, the Division shall enter its receipt and assign a claim number.

E. The Division may telephone the Defendant and attempt to resolve the claim.

F. When a rapid resolution is not effected, the Division shall mail to the Defendant a copy of the claim and a blank answer form together with an accompanying agency cover letter.

G. The Defendant shall have ten working days from the date of the letter to submit an answer to the claim.

H. Where the Defendant concedes the validity of the claim, the Defendant may pay or otherwise satisfy the claim within ten working days from the date of the letter without being subject to a penalty, under Section 34-28-9(2).

I. As an exception to Subsection H, defendants that are repeat offenders by having more than two wage claims filed against them within a running year, which claims are determined by the Division to be valid and to not have resulted from the same facts or circumstances, shall be subject to a penalty in accordance with Section 34-28-9(2).

I. The Division shall by mail provide a copy of the defendant's answer to the claimant. The claimant shall have ten working days from the date of the letter to submit a rebuttal, if any.

KEY: wages, minors, labor, time

Date of Enactment or Last Substantive Amendment: ~~December 17, 2002~~ 2008

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63-46b-1 et seq.

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**Labor Commission, Safety
R616-3-3
Safety Codes for Elevators**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30943

FILED: 01/31/2008, 14:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule amendment is to adopt the latest American Society of Mechanical Engineers (ASME) A17.1, 2007 edition, ASME A18.1, November 29, 2005, edition, and International Building Code (IBC), 2006 edition.

SUMMARY OF THE RULE OR CHANGE: The rule adopts the 2007 Edition of the ASME A17.1 Safety Code for Elevators and Escalators and the 2005 Edition of the ASME A18.1 Safety Standard for Platform Lifts and Stairway Chairlifts and also the 2006 IBC. The 2007 ASME A17.1 also references the newly developed ASME A17.7 Code, which is a Performance Base Code for Elevators and Escalators.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-101 et seq.

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: ASME A17.1, Safety Code for Elevators and escalators, 2007 edition, issued April 6, 2007; 2006 International Building Code, 2006 edition; and ASME A18.1-2005 Safety Standard For Platform Lifts And Stairway Chairlifts, issued November 29, 2005

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Although the 2007 ASME Codes address a large number of relatively minor changes, these changes taken as a whole will not result in net costs or savings. As for the purchase of the new code books, the ASME Code is purchased every three years and ASME supplies one complimentary set to the division. This also applies to the IBC Code.

❖ LOCAL GOVERNMENTS: Although the ASME and IBC Codes address a large number of relatively minor changes, these changes taken as a whole will not result in net costs or savings to local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Although the 2007 ASME and IBC Codes address a large number of relatively minor changes, these changes taken as a whole will not result in net costs or savings. These changes should not result in any aggregate cost or savings to manufacturers, dealers, or purchasers of elevators and escalators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this proposed rule. The revisions to the ASME and IBC standards that are incorporated by this rule merely clarify existing standards, correct errors in the earlier standards, or provide alternative methods for meeting code requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The technical changes required by the 2007 ASME and the 2006 IBC codes will have no net fiscal impact on businesses. However, by adopting the new codes, Utah standards will remain consistent with national standards. This will allow businesses to avoid the costs that would otherwise accrue if Utah standards were based on outdated codes that were no longer followed nationally. Sherrie Hayashi, Commissioner

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

LABOR COMMISSION
SAFETY
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:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-3. Elevator Rules.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 200[4]7 ed. issued April [30]6, 200[4]7, [~~ASME A17.1a-2005 issued April 29, 2005 and ASME A17.1S-2005 issued August 12, 2005,~~] and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler and Elevator Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 200[3]6 International Building Code.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-200[3]5 Safety Standard For Platform Lifts And Stairway Chairlifts, issued [~~July 29, 2003~~]November 29, 2005.

KEY: elevators, certification, safety

Date of Enactment or Last Substantive Amendment: [~~February 8, 2006~~]2008

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34A-1-101 et seq.

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Natural Resources; Oil, Gas and
Mining; Coal
R645-100-200
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 30932
FILED: 01/29/2008, 15:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment results from a request to study rules by the Utah Mining Association and a subsequent informal rulemaking process. The purpose of this rule change is to clarify the definition of intermittent stream as it currently includes attributes of ephemeral stream, another defined term.

SUMMARY OF THE RULE OR CHANGE: This rule change deletes a portion of the intermittent stream definition which includes attributes of an ephemeral stream. This change will bring clarity in the Coal Program rules where these terms are used. In order to remain as effective as the federal regulation, the portion of the intermittent stream definition that is being deleted is re-inserted into performance standards in the Coal Program rules, as shown in a companion rulemaking filing affecting Rule R645-301. (DAR NOTE: The proposed amendment to Rule R645-301 is under DAR No. 30933 in this issue, February 15, 2008, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 40-10-6 and 40-10-10

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget from this rule change. This rule provides additional clarity to the definition of a term utilized within the rules of the division's Coal Program.
- ❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government from this rule change. Local governments are not impacted since they are not operators of coal mines in Utah.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses and persons other than businesses from this rule change because these parties are normally not operators of coal mines in Utah. Coal mine operators are subject to Title R645 rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators in Utah are regulated via Title R645 rules. No new compliance costs are expected for coal mine operators from this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will not increase cost to businesses and the improved clarity of the definition of intermittent stream may cause a minor reduced

fiscal impact to coal operators regulated by the Coal Program.
Michael Styler, Executive Director

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@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 03/17/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/27/2008 at 10:00 AM, Natural Resources, 1594 W North Temple, Suite 1040, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2008

AUTHORIZED BY: John Baza, Director

**R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-100. Administrative: Introduction.
R645-100-200. Definitions.**

As used in the R645 Rules, the following terms have the specified meanings:

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"Imminent Danger to the Health and Safety of the Public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding Structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid material.

"Impoundments" means all water, sediment, slurry, or other liquid or semiliquid holding structures, either naturally formed or artificially built.

"Indian Lands" means all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

"Indirect Financial Interest" means the same financial relationships as for direct ownership, but where the employee reaps the

benefits of such interests, including interests held by his or her spouse, minor child(ren) and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining and reclamation operations in which the spouse, minor child(ren), or other resident relatives hold a financial interest.

"In-Situ Processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in-situ gasification, in-situ leaching, slurry mining, solution mining, borehole mining, and fluid-recovery mining.

"Intermittent Stream" means ~~[(a) a stream, or reach of a stream, that drains a watershed of at least one square mile, or (b)]~~ a stream, or reach of a stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

"Irreparable Damage to the Environment" means any damage to the environment in violation of the Act, the State Program, or the R645 Rules that cannot be corrected by actions of the applicant.

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KEY: reclamation, coal mines
Date of Enactment or Last Substantive Amendment: ~~April 2, 2004~~ **2008**
Notice of Continuation: March 7, 2007
Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.



Natural Resources; Oil, Gas and
 Mining; Coal
R645-300-100
 Review, Public Participation, and
 Approval or Disapproval of Permit
 Applications and Permit Terms and
 Conditions

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 30934
 FILED: 01/29/2008, 15:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment results from a request to study rules by the Utah Mining Association and a subsequent informal rulemaking process. The purpose of this rule change is to require the division to issue a written finding with justification for additional information required from a coal operator after their application.

SUMMARY OF THE RULE OR CHANGE: This rule change requires the division to issue a written finding with justification for additional information required from a coal operator after their

application for a permit, permit change, or permit renewal. Numerous rules within Title R645 contain phrases such as "if required by the Division" and the division will provide a written finding with justification if such information is determined to be required for submission.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 40-10-6 and 40-10-11

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no significant costs or savings anticipated to the state budget from this rule change since this amendment represents a minor change from the current practice of the division's Coal Program.
- ❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government from this rule change. Local governments are not impacted since the amendment only places an additional rule requirement upon the division's Coal Program.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses and persons other than businesses from this rule change. These groups are not impacted since the amendment only places an additional rule requirement upon the division's Coal Program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via Title R645 rules. No new compliance costs are expected for coal mine operators. The impact of this rule in any manner is upon the Coal Program within the division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact upon businesses is expected from this rule change. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 OIL, GAS AND MINING; COAL
 Room 1210
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@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 03/17/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/27/2008 at 10:00 AM, Natural Resources, 1594 W North Temple, Suite 1040, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2008

AUTHORIZED BY: John Baza, Director

Natural Resources; Oil, Gas and Mining; Coal
R645-301
Coal Mine Permitting: Permit Application Requirements

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-300. Coal Mine Permitting: Administrative Procedures.
R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R645-300-100 present the procedures to carry out the entitled activities.

.....

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision - 120 days.

131.111.2. Amendments - 60 days.

131.112. Permit renewal - 120 days.

131.113. New underground mine applications - One year.

131.114. New surface mine applications - One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

132. Review of Compliance.

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KEY: reclamation, coal mines
Date of Enactment or Last Substantive Amendment: [1992]2008
Notice of Continuation: March 7, 2007
Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.



NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE No.: 30933

FILED: 01/29/2008, 15:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment results from a request to study rules by the Utah Mining Association and a subsequent informal rulemaking process. The purpose of this rule change is twofold: 1) to provide reference to rules which will satisfy casing and sealing requirements of drill holes into coal mines; and 2) modify coal mine permitting performance standards regarding ephemeral streams in conjunction with companion rulemaking in Section R645-100-200. (DAR NOTE: The proposed amendment to Section R645-100-200 is under DAR No. 30932 in this issue, February 15, 2008, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule change addresses two topical areas within Rule R645-301. This rule amendment will provide reference to rules which will satisfy casing and sealing requirements of drill holes into coal mines. In addition, in conjunction with the modification of the definition of intermittent stream in companion rulemaking affecting Section R645-100-200, this rule change adds ephemeral streams that drain a watershed of at least one square mile into the permitting performance standards in order to remain as effective as federal regulations for coal mines.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 40-10-6, 40-10-17, and 40-10-18

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget from this rule change. This rule change clarifies casing and sealing requirements of drill holes for coal operators and permitting personnel. Title R645 rules remain as effective as the corresponding federal regulations.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government from this rule change. Local governments are not impacted since they are not operators of coal mines in Utah.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses and persons other than businesses from this rule change because these parties are normally not operators of coal mines in Utah. Coal mine operators are subject to Title R645 rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators in Utah are regulated via Title R645 rules. No new compliance costs are expected for coal mine operators from this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will not increase cost to businesses. The new references to rules which satisfy casing and sealing requirements on drill holes may cause a minor reduced fiscal impact to coal operators due to the increased clarity in this rule. Michael Styler, Executive Director

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@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 03/17/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/27/2008 at 10:00 AM, Natural Resources, 1594 W North Temple, Suite 1040, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2008

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-301. Coal Mine Permitting: Permit Application Requirements.
R645-301-500. Engineering.

The rules in R645-301-500 present the requirements for engineering information which is to be included in a permit application.

510. Introduction. The engineering section of the permit application is divided into the operation plan, reclamation plan, design criteria, and performance standards. All of the activities associated with the coal mining and reclamation operations must be designed, located, constructed, maintained, and reclaimed in accordance with the operation and reclamation plan. All of the design criteria associated with the operation and reclamation plan must be met.

.....

535. Spoil. The permit application will describe designs for spoil placement and disposal.

535.100. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area in a controlled manner.

The fill and appurtenant structures will be designed using current, prudent engineering practices and will meet any design criteria established by the Division.

535.110. The fill will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction. The fill will:

535.111. Be located on the most moderately sloping and naturally stable areas available, as approved by the Division, and be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

535.112. Be the subject of sufficient foundation investigations. Any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures; and

535.113. Incorporate keyway cuts (excavations to stable bedrock) or rock toe buttresses to ensure stability where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Division based on local conditions. Where the toe of the spoil rests on a downslope, stability analyses will be performed in accordance with R645-301-535.150 to determine the size of rock toe buttresses and keyway cuts.

535.120. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243.

535.130. Placement of Excess Spoil. Excess spoil will be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. The Division may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

535.140. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the design of the spoil disposal structure will include the results of geotechnical investigations as follows:

535.141. The character of bedrock and any adverse geologic conditions in the disposal area;

535.142. A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

535.143. A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

535.144. A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

535.145. A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data will be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

535.150. If for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, under R645-301-535.112 and R645-

301-535.113, rock-toe buttresses or key-way cuts are required, the application will include the following:

535.151. The number, location, and depth of borings or test pits which will be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

535.152. Engineering specifications utilized to design the rock-toe buttress or key-way cuts which will be determined in accordance with R645-301-535.145.

535.200. Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills. Valley fills and head-of-hollow fills will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100, and these additional requirements.

535.210. Rock-core chimney drains may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams or ephemeral streams that drain a watershed of at least one square mile. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill.

535.220. The alternative rock-core chimney drain system will be incorporated into the design and construction of the fill as follows:

535.221. The fill will have along the vertical projection of the main buried channel or rill a vertical core of durable rock at least 16 feet thick which will extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains will connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400;

535.222. A filter system to ensure the proper long-term functioning of the rock core will be designed and constructed using current, prudent engineering practices; and

535.223. Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams or ephemeral streams that drain a watershed of at least one square mile be diverted into the rock core. The maximum slope of the top of the fill will be 33h:1v (three percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case will this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill will be graded with a three to five percent grade toward the fill and a one percent slope toward the rock core.

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550. Reclamation Design Criteria and Plans. Each permit application will include site specific plans that incorporate the following design criteria for reclamation activities.

551. Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, drill hole, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1711 and all other applicable state and federal regulations as soon as practical. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements.

552. Permanent Features.

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R645-301-600. Geology.

The rules in R645-301-600 present the requirements for information related to geology which is to be included in each permit application.

610. Introduction.

611. General Requirements. Each permit application will include descriptions of:

611.100. The geology within and adjacent to the permit area as given under R645-301-621 through R645-301-627; and

611.200. Proposed operations given under R645-301-630.

612. All cross sections, maps and plans as required by R645-301-622 will be prepared and certified as described under R645-301-512.100

620. Environmental Description.

621. General Requirements. Each permit application will include a description of the geology within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

622. Cross Sections, Maps and Plans. The application will include cross sections, maps and plans showing:

622.100. Elevations and locations of test borings and core samplings;

622.200. Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

622.300. All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area; and

622.400. Location, and depth if available, of gas and oil wells within the proposed permit area.

623. Each application will include geologic information in sufficient detail to assist in:

623.100. Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

623.200. Determining whether reclamation as required by R645-301 and R645-302 can be accomplished; and

623.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preparing the subsidence control plan described under R645-301-525 and R645-521-142.

624. Geologic information will include, at a minimum, the following:

624.100. A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description will include the regional and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it will also show how the regional and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It will be based on:

624.110. The cross sections, maps, and plans required by R645-301-622.100 through R645-301-622.400.

624.120. The information obtained under R645-301-624.200, R645-301-624.300 and R645-301-625; and

624.130. Geologic literature and practices.

624.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, samples will be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses will result in the following:

624.210. Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

624.220. Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the Division may find that the analysis for alkalinity-producing material is unnecessary; and

624.230. Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyritic sulfur content is unnecessary.

624.300. For lands within the permit and adjacent areas of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where the strata above the coal seam to be mined will not be removed, samples will be collected and analyzed from test borings or drill cores to provide the following data:

624.310. Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;

624.320. Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;

624.330. Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyrite sulfur content is unnecessary; and

624.340. For standard room and pillar mining operations, the thickness and engineering properties of clays of soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

625. If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of R645-301 and R645-302, the Division may require the collection, analysis and description of geologic information in addition to that required by R645-301-624.

626. An applicant may request the Division to waive in whole or in part the requirements of R645-301-624.200 and R645-301-624.300. The waiver may be granted only if the Division finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Division in a satisfactory form.

627. An application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will include, at a minimum, a description of overburden thickness and lithology.

630. Operation Plan.

631. Casing and Sealing of Exploration Holes and Boreholes. Each permit application will include a description of the methods used to backfill, plug, case, cap, seal or otherwise manage exploration holes or boreholes to prevent acid or toxic drainage from entering water resources, minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. Each exploration hole or borehole that is uncovered or exposed by coal mining and reclamation operations within the permit area will be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of an exploration borehole as a monitoring or water well must meet the provisions of R645-301-551 and R645-301-731. The requirements of R645-301-631 do not apply to boreholes drilled for the purpose of blasting.

631.100. Temporary Casing and Sealing of Drilled Holes. Each exploration borehole, other drill hole or borehole which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings or to be used to monitor ground water conditions will be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, protected during use by barricades, or fences, or other protective devices approved by the Division. These protective devices will be periodically inspected and maintained in good operating condition by the operator conducting surface coal mining and reclamation activities.

631.200. Permanent Casing and Sealing of Exploration Holes and Boreholes. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under R645-301-731.400, each exploration hole or borehole will be plugged, capped, sealed, backfilled or otherwise properly managed under R645-301-551, R645-301-631 and consistent with 30 CFR 75.1711. Permanent closure methods will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering water resources.

632. Subsidence Monitoring. Each application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, except where planned subsidence is projected to be used, include as part of the subsidence monitoring plan described under R645-301-525:

632.100. A determination of the commencement and degree of subsidence so other appropriate measures can be taken to prevent or reduce material damage; and

632.200. A map showing the locations of subsidence monitoring points within and adjacent to the permit area.

640. Performance Standards.

641. All exploration holes and boreholes will be permanently cased and sealed according to the requirements of R645-301-631 and R645-301-631.200.

642. All monuments and surface markers used as subsidence monitoring points and identified under R645-301-632.200 will be reclaimed in accordance with R645-301-521.210.

R645-301-700. Hydrology.

710. Introduction.

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731.600. Stream Buffer Zones.

731.610. No land within 100 feet of a perennial stream or an intermittent stream or an ephemeral stream that drains a watershed of at least one square mile will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R645-301-742.300.

731.620. The area not to be disturbed will be designated as a buffer zone, and the operator will mark it as specified in R645-301-521.260.

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742.300. Diversions.

742.310. General Requirements.

742.311. With the approval of the Division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions will be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions will not be used to divert water into underground mines without approval of the Division in accordance with R645-301-731.510.

742.312. The diversion and its appurtenant structures will be designed, located, constructed, maintained and used to:

742.312.1. Be stable;

742.312.2. Provide protection against flooding and resultant damage to life and property;

742.312.3. Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

742.312.4. Comply with all applicable local, Utah, and federal laws and regulations.

742.313. Temporary diversions will be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process will be restored in accordance with R645-301 and R645-302. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion will be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement will not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion will be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

742.314. The Division may specify additional design criteria for diversions to meet the requirements of R645-301-742.300.

742.320. Diversion of Perennial and Intermittent Streams and Ephemeral Streams that Drain a Watershed of at Least One Square Mile.

742.321. Diversion of ~~perennial and intermittent~~ streams within the permit area may be approved by the Division after making the finding relating to stream buffer zones under R645-301-731.600. This applies to perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile will be certified by a qualified registered professional engineer as meeting the performance standards of R645-301 and R645-302 and any design criteria set by the Division.

742.330. Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams and ephemeral streams that drain a watershed of at least one square mile, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams that drain a watershed of less than one square mile.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R645-301-742.310.

742.333. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

742.400. Road Drainage.

742.410. All Roads.

742.411. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads will incorporate appropriate limits for surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.

742.412. No part of any road will be located in the channel of an intermittent or perennial stream or an ephemeral stream that drains a watershed of at least one square mile unless specifically approved by the Division in accordance with applicable parts of R645-301-731 through R645-301-742.300.

742.413. Roads will be located to minimize downstream sedimentation and flooding.

742.420. Primary Roads.

742.421. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

742.422. Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction.

742.423. Drainage Control.

742.423.1. Each primary road will be designed, constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system will be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or an alternative event of greater size as demonstrated to be needed by the Division.

742.423.2. Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

742.423.3. Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins will be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

742.423.4. Natural stream channels will not be altered or relocated without the prior approval of the Division in accordance with R645-301-731.100 through R645-301-731.522, R645-301-731.600, R645-301-731.800, R645-301-742.300, and R645-301-751.

742.423.5. Except as provided in R645-301-742.422, drainage structures will be used for stream channel crossings, made using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practice.

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760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R645-301 and R645-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of R645-301 and R645-302 and to conform to the approved reclamation plan.

762. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for coal mining and reclamation operations, including:

762.100. Restoring the natural drainage patterns;

762.200. Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain.

763. Siltation Structures.

763.100. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

763.200. When the siltation structure is removed, the land on which the siltation structure was located will be regraded and revegetated in accordance with the reclamation plan and R645-301-358, R645-301-356, and R645-301-357. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.

764. Structure Removal. The application will include the timetable and plans to remove each structure, if appropriate.

765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R645-301-529.400, R645-301-551, R645-301-631.100, and R645-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: ~~February 6, 2004~~ **2008**

Notice of Continuation: March 7, 2007

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.



Tax Commission, Property Tax
R884-24P-62
 Valuation of State Assessed Unitary
 Properties Pursuant to Utah Code Ann.
 Section 59-2-201

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30931

FILED: 01/29/2008, 11:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to address valuation of large wind power generating plants when they are developed.

SUMMARY OF THE RULE OR CHANGE: Certain income tax energy credits are treated as intangible property similar to low-income housing credits. Also clarifies use of a discounted cash flow methodology.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-201

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Property taxes are not collected by state agencies.
- ❖ LOCAL GOVERNMENTS: None--No significant plants exist at this time.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Negligible--Only a few, if any, power plants are operated by small business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The rule is already in place. The changes do not materially affect existing compliance or create new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated impacts. 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 cle@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 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

~~[A-](1)~~ Purpose. The purpose of this rule is to:

~~[+](a)~~ specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

~~[2-](b)~~ identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

~~[B-](2)~~ Definitions:

~~[+](a)~~ "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

~~[2-](b)~~ "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller,

neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

~~[3-](c)~~ "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

~~[4-](d)~~ "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

~~[+](i)~~ Unitary properties include:

~~[+](A)~~ all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

~~[2-](B)~~ all property of public utilities as defined in Section 59-2-102.

~~[b)](ii)~~ These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

~~[+](A)~~ "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

~~[2-](B)~~ "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

~~[3-](C)~~ "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

~~[E-](3)~~ All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

~~[D-](4)~~ General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

~~[+](a)~~ The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah_2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

~~[2-](b)~~ The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in ~~[E-]Subsection (5)~~.

~~[+](i)~~ Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

~~[b)](ii)~~ Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in ~~[E-4]Subsection (5)(d)~~.

~~[e)](iii)~~ Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate by a preponderance of

evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

~~[3-](c)~~ Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

~~[E-](5)~~ Appraisal Methodologies.

~~[+](a)~~ Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

~~[+](i)~~ "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

~~[+](A)~~ Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

~~[2-](B)~~ Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

~~[+](I)~~ Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

~~[+](II)~~ Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

~~[+](III)~~ External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

~~[+](ii)~~ Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

~~[+](iii)~~ Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

~~[+](iv)~~ Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

~~[+](v)~~ RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

~~[2-](b)~~ Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

~~[+](i)~~ Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

~~[+](A)~~ Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

~~[+](I)~~ NOI is defined as net income plus interest.

~~[+](II)~~ Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

~~[+](III)~~ Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

~~[+](Aa)~~ If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

~~[+](Bb)~~ If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

~~[2-](B)~~ The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

~~[+](I)~~ The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

~~[+](II)~~ The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

~~[+](Aa)~~ The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

~~[+](Bb)~~ The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

~~[+](Cc)~~ The risk free rate shall be the current market rate on 20-year Treasury bonds.

~~[+](Dd)~~ The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

~~[+](Ee)~~ The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

~~[(3)](C)~~ The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

~~[(a)](I)~~ If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

~~[(b)](ii)~~ A discounted cash flow (DCF) method ~~[is]may be~~ impractical to implement in a mass appraisal environment, but may be used ~~[to value individual properties]when reliable cash flow estimates can be established.~~

~~(A)~~ A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

~~(B)~~ Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

~~(C)~~ Growth may not be attributed to assets not in place as of the lien date.

~~[(e)](iii)~~ Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

~~[(3)](c)~~ Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

~~[(a)](I)~~ Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

~~[(b)](II)~~ Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

~~[(4)](d)~~ Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

~~[(F)](6)~~ Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

~~[(1)](a)~~ Cost Regulated Utilities.

~~[(a)](I)~~ HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by

taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

~~[(4)](A)~~ subtracting intangible property;

~~[(2)](B)~~ subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

~~[(3)](C)~~ adding any taxable items not included in the utility's net plant account or rate base.

~~[(b)](II)~~ Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

~~[(e)](III)~~ Items excluded from rate base under ~~[(F-1-a)(2)]Subsections (6)(a)(i)(A) or [(b)](B)~~ should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

~~[(2)](b)(i)~~ Railroads.

~~[(a)](ii)~~ The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

~~(c)(i)~~ Wind Power Generating Plants.

~~(ii)~~ Due to the unique financial nature of operating wind power generating plants, the following tax credits provided to entities operating wind power generating plants shall be identified and removed as intangible property from the indicators of value considered under this rule:

(A) renewable electricity production credits for wind power generation pursuant to Section 45, Internal Revenue Code; and

(B) refundable wind energy tax credits pursuant to Section 59-7-614(2)(c).

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: ~~November 27, 2007~~2008
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: 59-2-201

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NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends March 17, 2008. At its option, the agency may hold public hearings.

From the end of the waiting period through June 14, 2008, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

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

The Changes in Proposed Rules Begin on the Following Page.

**Commerce, Occupational and
Professional Licensing
R156-26a
Certified Public Accountant Licensing
Act Rules**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 30715
Filed: 01/30/2008, 09:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a public rule hearing held in December 2007 and additional review by the Utah Board of Accountancy and the division, a couple of additional amendments are being made to update documents incorporated by reference to the most current editions.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-26a-303a(5), the "Standards for Performing and Reporting on Peer Reviews" was updated to the January 1, 2005, edition. In Subsection R156-26a-501(2), the "Code of Professional Conduct" was updated to the June 1, 2007, edition. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 1, 2007, issue of the Utah State Bulletin, on page 4. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-26a-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Updates the AICPA "Standards for Performing and Reporting on Peer Reviews" from the October 5, 1998, edition to the January 1, 2005, edition; and updates the AICPA "Code of Professional Conduct" from the January 12, 1998, edition to the June 1, 2007, edition

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: As a result of these two additional proposed amendments, the division does not anticipate any further costs beyond those previously identified in the original proposed rule amendment filing.
- ❖ LOCAL GOVERNMENTS: These additional proposed amendments do not apply to local governments; therefore no costs or savings are anticipated. Proposed amendments only apply to licensed certified public accountants (CPA) and applicants for licensure as a CPA.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed amendments only apply to licensed CPAs and applicants for licensure as a CPA. As a result of these two

additional proposed amendments, the division does not anticipate any further costs beyond those previously identified in the original proposed rule amendment filing. Both of the updated documents can be obtained through the American Institute of Certified Public Accountants (AICPA).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed CPAs and applicants for licensure as a CPA. As a result of these two additional proposed amendments, the division does not anticipate any further costs beyond those previously identified in the original proposed rule amendment filing. Both of the updated documents can be obtained through the American Institute of Certified Public Accountants (AICPA).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing which updates references to current standards of the profession. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rule.**

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R156-26a-303a. Renewal Requirements - Peer Review.

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of licensees and firms.

(a) The purpose of the program is to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies.

(b) The program shall emphasize education and may include other remedial actions determined appropriate where a firm's work product and services do not comply with established professional standards.

(c) In the event a firm is unwilling or unable to comply with established standards, or intentionally disregards professional standards so as to warrant disciplinary action, the administering organization shall refer the matter to the Division and shall consult with the Division regarding appropriate action to protect the public interest.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review.

(d) A portion of the peer review may be performed by a regulatory body if the Utah Board of Accountancy approves the regulatory body as an administering organization. This does not by itself satisfy the peer review requirement unless the other standards as specified in this rule are fulfilled by the regulatory body.

(3) Selection of a Peer Reviewer or inspector in the case of inspections mandated by law or regulatory bodies.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review. Regulatory bodies will assign inspectors.

(4) Qualifications of a Peer Reviewer and inspectors.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or
(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(d) Regulatory bodies will determine the qualifications of inspectors.

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:

(a) Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective ~~October 5, 1998~~ January 1, 2005 as amended, which are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

(b) The Utah Board of Accountancy may review the standards used by the regulatory body to determine if those standards are sufficient to satisfy all or part of the peer review requirements, or what additional review may be required to meet the peer review requirements under this rule.

(6) If an administering organization finds that a peer review was not performed in accordance with this rule or the peer review results in a modified or adverse report or in repeat findings, the Peer Review Committee may require remedial action to assure that the

review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under this rule, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of on-site reviews; or

(B) results in an evaluation and report on selected engagements in the case of off-site reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(5) or in the case of an approved regulatory body, a report is issued under their standards.

(b) A multi-state firm not granted approval under R156-26a-303a(8)(a) shall undergo a peer review pursuant to this rule which shall comply with R156-26a-303a(8)(a) of the multi-state firm within this state; and

(c) A multi-state firm seeking approval under R156-26a-303a(8)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) A firm which does not perform services encompassed in the scope of minimum standards as set out in R156-26a-303a(5)(a) or (b) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10), the Division may authorize a change in a firm's year of review.

(10) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for

extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the Board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(11)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 90 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

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R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted [~~January 12, 1998, as amended, January 14, 1992 and October 28, 1997~~] June 1, 2007, which is hereby incorporated by reference.

KEY: accountants, licensing, peer review, continuing professional education

Date of Enactment or Last Substantive Amendment: 2008

Notice of Continuation: February 1, 2007

Authorizing, and Implemented or Interpreted Law: 58-26a-101; 58-1-106(1)(a); 58-1-202(1)(a)

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End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

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

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

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

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

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

Human Services, Services for People with Disabilities

R539-1-8

Non-Waiver Services for People with Brain Injury

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 30926
FILED: 01/28/2008, 08:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to include as part of the rule the specific International Classification of Diseases diagnosis codes eligible for coverage under the division's brain injury programs. This should remove any ambiguity about the conditions eligible for coverage.

SUMMARY OF THE RULE OR CHANGE: The rule now references the specific diagnostic codes eligible for coverage under the division's brain injury program. (DAR NOTE: A corresponding proposed amendment to Section R539-1-8 is under DAR No. 30877 in the February 1, 2008, issue of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-5-103

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The inclusion of specific diagnosis codes in this rule will be budget neutral to the division or any other state agency. The rule will provide administrative clarity

to the eligibility process, but it will not increase or decrease the number of individuals receiving services or the amount of services provided.

❖ **LOCAL GOVERNMENTS:** Local governments do not provide these services and will not be otherwise affected by this rule. It will not affect the budgets of local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small businesses and other persons will not be affected by this rule. Some small businesses under contract to the division provide services to those that are eligible. This rule will not affect the services provided by small business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only potential compliance costs could be seeking more than one medical opinion to obtain the diagnosis to be considered for eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have any fiscal impact on businesses. Individuals who apply for division brain injury services now have specific diagnostic codes to help determine eligibility. Businesses will not be affected by the eligibility determinations for these individuals. Lisa-Michele Church, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

This rule is needed to bring the division into full compliance with the requirement in Section 62A-5-103 to establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is applying to receive the services or currently receiving the services. This section provides specific diagnosis codes for brain injury and will provide an eligibility standard that is consistent with the intent of the statute.

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

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@utah.gov

THIS RULE IS EFFECTIVE ON: 01/28/2008

AUTHORIZED BY: George Kelner, Director

R539. Human Services, Services for People with Disabilities.

R539-1. Eligibility.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury[;] (by a licensed physician) according to the International Classifications of Diseases, 9th Revision, (ICD 9 CM). The following codes listed below qualify for ABI services:

047.9--aseptic meningitis (unspecified viral meningitis)
290 - 294 Codes not accepted as stand alone diagnosis (needing additional diagnosis)
290.4--vascular dementia
290.10 Prehensile dementia, uncomplicated
293.9--psychotic, post traumatic brain injury syndrome
294.0--amnesia
294.9--unspecified persistent mental disorders due to conditions classified elsewhere
294.9--with psychotic reaction
294.10-294.11--dementia without and with behavior disturbance Aggression, combative violent behaviors and wandering off
310.0 - 310.9 nonpsychotic disorder, brain damage
310.0--frontal lobe syndrome
310.1--mild memory loss or lack following organic brain damage
310.1--personality change due to conditions classified elsewhere
310.2--post concussion syndrome
310.2--post contusion syndrome, includes encephalopathy
310.2--post contusion syndrome, includes TBI
310.2--post contusion syndrome, includes TBI
310.2--post traumatic brain injury
310.2--post traumatic brain injury syndrome
310.8 - 310.9--other nonpsychotic mental disorder, following organic brain damage
310.8--other specified mental disorder following organic brain damage
310.8--other specified nonpsychotic mental disorders following organic brain damage

310.9--organic brain syndrome
310.9--Organic brain syndrome
310.9--organic brain syndrome (chronic or acute)
310.9--unspecified nonpsychotic mental disorder following organic brain damage
320.9--meningitis, bacterial
322.0--meningitis, nonpyogenic
322.2--meningitis, chronic
322.9--meningitis
323.0 - 323.82--choose to pick cause of encephalitis, not 323.9
324.0 - 324.9--Intracranial and intraspinal abscess
325 Phlebitis and thrombophlebitis of intracranial venous sinuses
326 Late effects of intracranial abscess or pyogenic infection
348.0--arachnoid cyst, brain; not as stand alone diagnosis (needs additional diagnosis)
348.1--anoxic brain damage
349.82 Toxic encephalopathy
430--subarachnoid hemorrhage
431--intracerebral hemorrhage
432.0--hematoma, non-traumatic brain
432.1--subdural hematoma
432--other and unspecified intracranial hemorrhage
433 Occlusion and stenosis of precerebral arteries (only if 5th digit is 1)
434 Occlusion of cerebral arteries (only if 5th digit is 1)
436--brain or cerebral, acute seizure; need another diagnosis in combination
438 - 438.89 Late effects of cerebrovascular disease (excluding 438.9)
780.93--Memory loss amnesia -only in combination with an E Code - (excludes 310.1 Mild Memory Disturbance due to organic brain damage) need an E code secondary to cause
List codes from 800 - 804 then 5th digit list only those that are 2 - 9 exclude 0 to 1(excluding 802's)
800.0--closed skull fracture, vault (parietal, frontal, vertex)
800.1 Fracture skull vault (frontal parietal) closed with laceration and contusion
800.1--closed skull fracture, vault with cerebral contusion
800.2 closed head injury with subarachnoid, subdural, and extradural hemorrhage
800.2 Closed skull fracture, with subarachnoid, subdural, and extradural hemorrhage
800.2--closed skull fracture, vault with epidural, extradural hemorrhage
800.2--closed skull vault fracture with subdural hemorrhage
800.3--closed skull fracture, vault with intracranial hemorrhage
800.3--Closed skull fx with other and unspecified intracranial hemorrhage
800.4--closed skull fracture, vault with intracranial injury
800.4--closed skull fx with intracranial injury of other and unspecified nature
800.5 - 800.9--Open skull fracture, vault (parietal or frontal area)
800.6--open skull fx with cerebral laceration and contusion
800.7--open skull fx with subarachnoid, subdural, and extradural hemorrhage
800.7--open skull vault fracture with subdural hemorrhage
800.8--open skull fx other and unspecified intracranial hemorrhage

800.9--Open skull fx with intracranial injury of other and unspecified nature

800.9--open vault fracture with intracranial injury of other and unspecified nature

801.0 - 801.9 Fracture of base of skull

801.0--closed skull fracture, base

801.1--closed skull fracture, with cerebral hemorrhage

801.2--closed skull base fracture with subdural hemorrhage

801.2--closed skull fracture with epidural hemorrhage

801.3 - 801.4--closed skull fracture, base with intracranial hemorrhage

801.5 - 801.9--open skull fracture, base of skull

801.7--open skull base fracture with subdural hemorrhage

803.0 - 804.9--Other and unqualified skull fractures (includes single or multiple fx)

803.0--closed skull fracture with facial injuries

803.1--closed skull fracture with cerebral contusion

803.2--closed skull fracture with epidural, extradural hemorrhage

803.2--closed skull fracture, with subachnoid, subdural, and extradural hemorrhage

803.2--other and unqualified skull fractures, closed, subdural hemorrhage

803.3--closed skull fracture with intracranial hemorrhage

803.4--closed skull fracture with intracranial injury

803.5 - 803.9--open skull fracture, other and unqualified

803.7--other and unqualified skull fractures, open, subdural hemorrhage

804.2--multiple fractures skull and face, closed, subdural hemorrhage

804.5 - 804.9--Open skull fracture, multiple fractures skull and face

804.7--multiple fractures skull and face, open, subdural hemorrhage

List codes from 850-854 then 5th digit list only those that are 2 - 9 exclude 0 to 1

850.1 - 850.5--concussion with loss of conscious

851.0 - 851.9--cerebral laceration and contusion, open or closed, specifies site

851.0--cerebral contusion without mention open wound

851.2--cerebral laceration without mention of open wound

851.4 or 851.6--cerebral or brain stem contusion s mention open wnd

851.4--contusion brain stem

851.8--cerebral contusion (851.0 - 851.9--specify site, open, closed)

851.8--contusion brain

851.8--other and unspecified cerebral contusion

851.8--other unspecified cerebral s mention open wound

852.0, 852.2, 854.4 hemorrhage s mention open wound

852.0 - 852.5--Subarachnoid, subdural, and extradural hemorrhage following injury

852.0--subarachnoid hemorrhage

852.2 - 852.3--subdural hemorrhage, injury, without mention open, open

852.2--subdural hemorrhage following injury, s mention open wound

852.2--traumatic brain injury, subdural

852.3--subdural hemorrhage following injury, with open wound

852.4 - 852.5--extradural hemorrhage injury, without mention open

853.0 other intracranial hemorrhage after injury s mention open wound

853.0 - 853.1--other and unspecified intracranial hemorrhage following injury

853.0--hematoma, traumatic brain

854.0 - 854.1--Intracranial injury of other and unspecified nature

854.0--injury intracranial

854.0--intracranial hemorrhage due to injury

854.1--intracranial injury of other and unspecified nature s mention open w

905.0 Late effects of fracture of skull and face bones (5th digit list only those that are 2 - 9 exclude 0 - 1)

906.0 Late effects of open wound of head, neck, and trunk (5th digit list only those that are 2 - 9 exclude 0 - 1)

907.0--late effect of intracranial injury (5th digit list only those that are 2 - 9 exclude 0 - 1);

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with mental retardation or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L[B1], completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall

determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

KEY: human services, disabilities, social security numbers

Date of Enactment or Last Substantive Amendment: January 28, 2008

Notice of Continuation: November 29, 2007

Authorizing, and Implemented or Interpreted Law: 62A-5-103; 62A-5-105

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End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Environmental Quality, Water Quality **R317-9** Administrative Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30948
FILED: 02/01/2008, 15:05

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule implements the Administrative Procedures Act, Title 63, Chapter 46b, as required, for the Division of Water Quality. The Water Quality Board is given rulemaking authority in Section 19-4-104, of the Utah Water Quality Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either supporting or opposing 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 sets forth the administrative procedures of the Division of Water Quality in compliance with the Administrative Procedures Act and consolidates these procedures into one location. Therefore, this rule should be continued.

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

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 02/01/2008



Health, Health Care Financing, Coverage and Reimbursement Policy **R414-27** Medicare Nursing Home Certification

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30920
FILED: 01/17/2008, 11:15

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 requires the Department of Health to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this 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 is important because it enforces the necessary standards for nursing homes and for Medicare and Medicaid to pay for services to

nursing home residents. This rule also enables more third-party collections and reduces Medicaid nursing home payments. Therefore, this rule should be continued.

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:

Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/17/2008



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

R414-301

Medicaid General Provisions

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30936
FILED: 01/31/2008, 09:18

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 requires the department to implement the Medicaid program through administrative rules. In addition, 42 CFR 431.220 through 431.246 authorize this rule because it sets forth hearing rights and procedures for Medicaid clients.

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 or oral comments have been received regarding this 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 because it defines terms necessary for eligibility purposes. This rule also discusses the authority of the department to contract with the Department of Human Services and the Department of Workforce Services.

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:

Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/31/2008



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

R414-302

Eligibility Requirements

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30921
FILED: 01/25/2008, 12:56

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 requires the department to implement the Medicaid program through administrative rules. In addition, 42 CFR 435 Subpart E outlines general requirements for determining Medicaid eligibility.

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 or oral comments have been received regarding this 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 is necessary because it outlines eligibility requirements for Medicaid clients to receive Medicaid services. Therefore, this rule should be continued.

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:
Kimi McNutt at the above address, by phone at 801-538-6381,
by FAX at 801-538-6099, or by Internet E-mail at
KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/25/2008

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:
Kimi McNutt at the above address, by phone at 801-538-6381,
by FAX at 801-538-6099, or by Internet E-mail at
KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/25/2008

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

R414-303
Coverage Groups

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR File No.: 30925
FILED: 01/25/2008, 14:23

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 28-18-3 requires the department to implement the Medicaid program through administrative rules. In addition, 42 CFR 435 Subparts B, C, and D outline requirements for coverage of categorically needy individuals, options for coverage of those individuals, and options for coverage of medically needy individuals.

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 oral or written comments have been received regarding this 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 is necessary because it establishes requirements for different groups who qualify for Medicaid coverage. Therefore, this rule should be continued.

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

R414-304
Income and Budgeting

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR File No.: 30924
FILED: 01/25/2008, 14:21

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 requires the department to implement the Medicaid program through administrative rules. In addition, 42 CFR 435 Subpart G outlines general financial eligibility requirements and options.

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 or oral comments have been received regarding this 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 is necessary because it establishes guidelines for income based eligibility requirements. Therefore, this rule should be continued.

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:

Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/25/2008

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:

Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/31/2008

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**Health, Health Care Financing,
Coverage and Reimbursement Policy**
R414-305
Resources

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30937
FILED: 01/31/2008, 09:19

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules. In addition, 42 CFR 435.840 requires a Medicaid agency to use a single resource standard for each group.

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 or oral comments have been received regarding this request.

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 establishes resource criteria to become eligible for Medicaid. Specifically, it establishes resource standards for the evaluation of assets to determine eligibility for categorically and medically needy Medicaid clients. Therefore, this rule should be continued.

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**Health, Health Care Financing,
Coverage and Reimbursement Policy**
R414-306
Program Benefits

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30922
FILED: 01/25/2008, 12:58

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 requires the department to implement the Medicaid program through administrative rules. In addition, 42 CFR 440 Subpart B outlines requirements and limits applicable to all services.

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 or oral comments have been received regarding this 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 because it outlines and informs clients of the benefits of the Medicaid program.

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:

Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/25/2008

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:

Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/31/2008

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**Health, Health Care Financing,
Coverage and Reimbursement Policy**
R414-308
**Application, Eligibility Determinations
and Improper Medical Assistance**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 30938
FILED: 01/31/2008, 09:21

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. Section 26-18-3 grants the department the authority to implement the Medicaid program through administrative rules. In addition, 42 CFR 435.952 requires the agency to independently verify client information to determine Medicaid eligibility.

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 or oral comments have been received regarding this 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 is necessary because it establishes requirements for medical assistance applications, eligibility decisions, and improper medical assistance. Therefore, this rule should be continued.

◆ ————— ◆
Human Services, Recovery Services
R527-56
In-Kind support

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 30939
FILED: 01/31/2008, 11:13

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Office of Recovery Services (ORS) is responsible for collecting child support when there is an application for child support services or the state has provided public assistance in accordance with Section 62A-11-104. Section 62A-11-307.2 specifies the duties of a custodial parent after support rights have been assigned to the state. The custodial parent may not do anything to prejudice the rights of ORS to collect support, which include agreements to change the manner or amount of support ordered by the court or administrative authority. Under this statute, the custodial parent must immediately deliver any payment to ORS that is received from the noncustodial parent. In 1991 a court decision, Utah Dept of Social Servs. v. Adams, 806 P.2d. 1193 {Utah CR. App. 1991}, required that ORS give credit under certain condition for in-kind support payments made where a court order exists.

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 defines in-kind payments and establishes when and under what conditions ORS is required to give the noncustodial parent credit for in-kind support payments. It also describes the conditions for ORS to require payment of court-ordered cash support in cash only, and when to take action to recover the case equivalent of "in-kind support" that has been paid to the custodial parent.

Therefore, this rule should be continued. Upon review of this rule, the department notes that this rule needs to be amended to add a section containing the rulemaking authority and purpose of this rule which will be done soon.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 01/31/2008

Natural Resources, Administration

R634-1

Americans With Disabilities Complaint Procedure

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30923
FILED: 01/25/2008, 13:15

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Section 63-46a-3 and is administered in accordance with 28 CFR 35.107, 2002 ed., whereby the Department of Natural Resources (DNR) adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act (ADA).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DNR has not received any written comments, either in support or opposition to Rule R634-1. To date, DNR has not received any complaints filed in accordance with this rule and Title II of the ADA. However, the complaint procedures adopted therein will provide the procedures for the prompt and equitable resolution of complaints.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As stated above, DNR has not received any complaints filed in accordance with this rule and Title II of the ADA. However, the complaint procedures adopted therein will provide the procedures for the prompt and equitable resolution of complaints in accordance with 28 CFR 35.107, 2002 ed. Continuation of this rule is necessary to provide complaint procedures for prompt and equitable resolutions of complaints filed in accordance with Title II of the ADA.

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

NATURAL RESOURCES
ADMINISTRATION
Room 3710
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Betty Barela at the above address, by phone at 801-538-7201, by FAX at 801-538-7315, or by Internet E-mail at bettybarela@utah.gov

AUTHORIZED BY: Michael Styler, Executive Director

EFFECTIVE: 01/25/2008

Natural Resources, Water Rights

R655-7

Administrative Procedures for Notifying the State Engineer of Sewage Effluent Use or Change in the Point of Discharge for Sewage Effluent

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30947
FILED: 02/01/2008, 14:48

**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 73-3c-302(8), in the Wastewater Reuse Act, authorizes the state engineer to make rules to implement the provisions of this section of the statute.

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, by statute, entities desirous of reusing wastewater effluent must receive state engineer approval before the water can be used. The rule provides the steps for providing all necessary information and completing the required application for the state engineer to consider. Therefore, this rule should

be continued. There are some statutory references that need to be corrected and will be done soon.

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

NATURAL RESOURCES
WATER RIGHTS
Room 220
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kaelyn Anfinen at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at KAELYNANFINSEN@utah.gov

AUTHORIZED BY: Jerry Olds, Director

EFFECTIVE: 02/01/2008

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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63-46a-9). 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 Subsection 63-46a-9(4) and (5).

Public Safety

Criminal Investigations and Technical Services, Criminal Identification

No. 30928: R722-300. Concealed Firearm Permit Rule.

ENACTED OR LAST REVIEWED: 01/28/2003 (No. 25999, 5YR, filed 01/28/2003 at 11:48 a.m., published 02/15/2003).

EXTENDED DUE DATE: 05/27/2008

No. 30929: R722-320. Undercover Identification.

ENACTED OR LAST REVIEWED: 01/28/2003 (No. 25998, 5YR, filed 01/28/2003 at 11:44 a.m., published 02/15/2003).

EXTENDED DUE DATE: 05/27/2008

No. 30930: R722-340. Emergency Vehicles.

ENACTED OR LAST REVIEWED: 01/28/2003 (No. 25996, 5YR, filed 01/28/2003 at 11:30 a.m., published 02/15/2003).

EXTENDED DUE DATE: 05/27/2008

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. 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).

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Education

Administration

No. 30781 (AMD): R277-469. Instructional Materials Commission Operating Procedures.
Published: December 15, 2007
Effective: January 22, 2008

Governor

Economic Development

No. 30788 (NEW): R357-2. Rural Broadband Service Fund.
Published: December 15, 2007
Effective: January 30, 2008

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 30775 (AMD): R414-52. Optometry Services.
Published: December 15, 2007
Effective: February 1, 2008

No. 30776 (AMD): R414-53. Eyeglasses Services.
Published: December 15, 2007
Effective: February 1, 2008

No. 30652 (AMD): R414-304. Income and Budgeting.
Published: December 1, 2007
Effective: January 28, 2008

Human Resource Management

Administration

No. 30778 (AMD): R477-8-5. Overtime.
Published: December 15, 2007
Effective: January 22, 2008

Human Services

No. 30773 (AMD): R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.
Published: December 15, 2007
Effective: January 30, 2008

Natural Resources

Wildlife Resources

No. 30777 (AMD): R657-12. Hunting and Fishing Accommodations for Disabled People.
Published: December 15, 2007
Effective: January 22, 2008

Tax Commission

Administration

No. 30780 (AMD): R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.
Published: December 15, 2007
Effective: January 25, 2008

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2008, including notices of effective date received through February 1, 2008, the effective dates of which are no later than February 15, 2008. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Agriculture and Food					
<u>Plant Industry</u>					
R68-7	Utah Pesticide Control Act	30611	AMD	01/07/2008	2007-22/11
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-1-102a	Global Definitions of Levels of Supervision	30655	AMD	01/08/2008	2007-23/3
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rules	30654	AMD	01/07/2008	2007-23/14
R156-56	Utah Uniform Building Standard Act Rules	30574	AMD	01/01/2008	2007-21/38
R156-56-420	Administration of Building Code Training Fund	30573	AMD	01/01/2008	2007-21/57
R156-76	Professional Geologist Licensing Act Rules	30694	AMD	01/08/2008	2007-23/17

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Community and Culture					
<u>Housing and Community Development</u>					
R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	30451	AMD	01/01/2008	2007-19/6
Corrections					
<u>Administration</u>					
R251-304	Contract Procedures	30952	5YR	02/05/2008	Not Printed
Crime Victim Reparations					
<u>Administration</u>					
R270-1-11	Collateral Source	30593	AMD	01/02/2008	2007-22/33
Education					
<u>Administration</u>					
R277-423	Delivery of Flow Through Money	30845	AMD	02/07/2008	2008-1/8
R277-469	Instructional Materials Commission Operating Procedures	30781	AMD	01/22/2008	2007-24/4
R277-470-7	Timelines - Charter School Starting Date	30846	AMD	02/07/2008	2008-1/9
R277-518	Applied Technology Education Licenses	30878	5YR	01/08/2008	2008-3/72
R277-600	Student Transportation Standards and Procedures	30879	5YR	01/08/2008	2008-3/72
R277-605	Coaching Standards and Athletic Clinics	30880	5YR	01/08/2008	2008-3/73
R277-609	Standards for School District Discipline Plans	30847	AMD	02/07/2008	2008-1/10
R277-610	Released-Time Classes for Religious Instruction	30881	5YR	01/08/2008	2008-3/73
R277-700	The Elementary and Secondary School Core Curriculum	30882	5YR	01/08/2008	2008-3/74
R277-702	Procedures for the Utah General Educational Development Certificate	30883	5YR	01/08/2008	2008-3/74
R277-709	Education Programs Serving Youth in Custody	30884	5YR	01/08/2008	2008-3/75
R277-718	Utah Career Teaching Scholarship Program	30885	5YR	01/08/2008	2008-3/75
R277-719	Standards for Selling Foods Outside of the Reimbursable Meal in Schools	30848	NEW	02/07/2008	2008-1/12
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	30886	5YR	01/08/2008	2008-3/76
R277-722	Withholding Payments and Commodities in the CACFP	30887	5YR	01/08/2008	2008-3/76
R277-730	Alternative High School Curriculum	30888	5YR	01/08/2008	2008-3/77
Environmental Quality					
<u>Air Quality</u>					
R307-101	General Requirements	30697	AMD	02/08/2008	2007-23/21
R307-101	General Requirements	30959	5YR	02/08/2008	Not Printed
R307-102	General Requirements: Broadly Applicable Requirements	30960	5YR	02/08/2008	Not Printed
R307-115	General Conformity	30961	5YR	02/08/2008	Not Printed
R307-115	General Conformity	30698	AMD	02/08/2008	2007-23/28
R307-121-3	Procedures for OEM Vehicles	30889	NSC	01/30/2008	Not Printed
R307-170	Continuous Emission Monitoring Program	30962	5YR	02/08/2008	Not Printed
R307-170-7	Performance Specification Audits	30699	AMD	02/08/2008	2007-23/29
R307-202	Emission Standards: General Burning	30963	5YR	02/08/2008	Not Printed
R307-203	Emission Standards: Sulfur Content of Fuels	30964	5YR	02/08/2008	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R307-214	National Emission Standards for Hazardous Air Pollutants	30430	AMD	01/11/2008	2007-19/12
R307-214	National Emission Standards for Hazardous Air Pollutants	30895	5YR	01/11/2008	2008-3/77
R307-215	Acid Rain Requirements	30700	REP	02/08/2008	2007-23/31
R307-220	Emission Standards: Plan for Designated Facilities	30965	5YR	02/08/2008	Not Printed
R307-221	Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills	30701	AMD	02/08/2008	2007-23/32
R307-221	Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills	30966	5YR	02/08/2008	Not Printed
R307-221-2	Definitions and References	30832	NSC	02/08/2008	Not Printed
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	30702	AMD	02/08/2008	2007-23/36
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	30967	5YR	02/08/2008	Not Printed
R307-222-1	Purpose and Applicability	30833	NSC	02/08/2008	Not Printed
R307-223	Existing Incinerators for Hospital, Medical, Infectious Waste	30703	AMD	02/08/2008	2007-23/38
R307-223	Emission Standards: Existing Small Municipal Waste Combustion Units	30968	5YR	02/08/2008	Not Printed
R307-224	Mercury Emission Standards: Coal-Fired Electric Generating Units	30969	5YR	02/08/2008	Not Printed
R307-224-2	Emission Guidelines and Compliance Times for Coal-Fired Electric Generating Units	30704	AMD	02/08/2008	2007-23/39
R307-250	Western Backstop Sulfur Dioxide Trading Program	30970	5YR	02/08/2008	Not Printed
R307-310	Salt Lake County: Trading of Emission Budgets for Transportation Conformity	30971	5YR	02/08/2008	Not Printed
R307-310-2	Definitions	30705	AMD	02/08/2008	2007-23/40
R307-401-14	Used Oil Fuel Burned for Energy Recovery	30709	AMD	02/08/2008	2007-23/42
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	30431	AMD	01/11/2008	2007-19/15
R307-417	Acid Rain Sources	30706	AMD	02/08/2008	2007-23/43
R307-801	Asbestos	30707	AMD	02/08/2008	2007-23/45
R307-801	Asbestos	30972	5YR	02/08/2008	Not Printed
R307-840	Lead-Based Paint Accreditation, Certification and Work Practice Standards	30708	AMD	02/08/2008	2007-23/48
R307-840	Lead-Based Paint Accreditation, Certification and Work Practice Standards	30973	5YR	02/08/2008	Not Printed
<u>Environmental Response and Remediation</u>					
R311-401-2	Utah Hazardous Substances Priority List	30567	AMD	01/02/2008	2007-21/59
<u>Water Quality</u>					
R317-1-4	Utilization and Isolation of Domestic Wastewater Treatment Works Effluent	30639	AMD	02/04/2008	2007-22/52
R317-3-11	Land Application of Wastewater Effluents	30638	AMD	02/04/2008	2007-22/57
R317-9	Administrative Procedures	30948	5YR	02/01/2008	2008-4/42
R317-13	Approvals and Permits for a Water Reuse Project	30637	NEW	02/04/2008	2007-22/61
R317-14	Approval in Change in Point of Discharge of POTW	30636	NEW	02/04/2008	2007-22/62
Governor					
<u>Economic Development</u>					
R357-2	Rural Broadband Service Fund	30788	NEW	01/30/2008	2007-24/9
R357-2-7	Ranking and Approval of Applications	30859	NSC	01/30/2008	Not Printed

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Health					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-21	Physical and Occupational Therapy	30653	R&R	01/10/2008	2007-23/50
R414-27	Medicare Nursing Home Certification	30920	5YR	01/17/2008	2008-4/42
R414-52	Optometry Services	30775	AMD	02/01/2008	2007-24/12
R414-53	Eyeglasses Services	30776	AMD	02/01/2008	2007-24/13
R414-301	Medicaid General Provisions	30936	5YR	01/31/2008	2008-4/43
R414-302	Eligibility Requirements	30921	5YR	01/25/2008	2008-4/43
R414-303	Coverage Groups	30925	5YR	01/25/2008	2008-4/44
R414-304	Income and Budgeting	30924	5YR	01/25/2008	2008-4/44
R414-304	Income and Budgeting	30652	AMD	01/28/2008	2007-23/54
R414-305	Resources	30937	5YR	01/31/2008	2008-4/45
R414-306	Program Benefits	30922	5YR	01/25/2008	2008-4/45
R414-308	Application, Eligibility Determinations and Improper Medical Assistance	30938	5YR	01/31/2008	2008-4/46
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-6	Emergency Medical Services Competitive Grants Program Rules	30758	AMD	02/07/2008	2007-24/14
<u>Health Systems Improvement, Licensing</u>					
R432-16	Hospice Inpatient Facility Construction	30975	5YR	02/11/2008	Not Printed
Human Resource Management					
<u>Administration</u>					
R477-8-5	Overtime	30778	AMD	01/22/2008	2007-24/16
Human Services					
<u>Administration</u>					
R495-861	Requirements for Local Discretionary Social Services Block Grant Funds	30773	AMD	01/30/2008	2007-24/18
<u>Child and Family Services</u>					
R512-20	Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services (5YR EXTENSION)	30720	NSC	01/07/2008	Not Printed
R512-20	Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services	30716	REP	01/07/2008	2007-23/58
R512-50	Fee Collection for Clients Served by Pre-School Day Treatment Contract (5YR EXTENSION)	30721	NSC	01/07/2008	Not Printed
R512-50	Fee Collection for Clients Served by Pre-School Day Treatment Contract	30718	REP	01/07/2008	2007-23/60
<u>Recovery Services</u>					
R527-39	Applicant/Recipient Cooperation	30891	5YR	01/10/2008	2008-3/78
R527-56	In-Kind support	30939	5YR	01/31/2008	2008-4/46
R527-430	Administrative Notice of Lien-Levy Procedures	30905	5YR	01/14/2008	2008-3/78
<u>Services for People with Disabilities</u>					
R539-1-8	Non-Waiver Services for People with Brain Injury	30926	EMR	01/28/2008	2008-4/38
Insurance					
<u>Administration</u>					
R590-157	Surplus Lines Insurance Premium Tax and Stamping Fee	30890	5YR	01/10/2008	2008-3/79

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R590-175	Basic Health Care Plan Rule	30508	AMD	02/08/2008	2007-20/24
R590-218	Permitted Language for Reservation of Discretion Clauses	30897	5YR	01/11/2008	2008-3/80
R590-243	Commercial Motor Vehicle Insurance Coverage	30490	NEW	01/11/2008	2007-20/28
Labor Commission					
<u>Adjudication</u>					
R602-2-4	Attorney Fees	30811	AMD	02/07/2008	2008-1/14
R602-3-3	Procedure for Requesting Approval	30810	AMD	02/07/2008	2008-1/16
<u>Antidiscrimination and Labor, Labor</u>					
R610-3-4	Filing Procedure and Commencement of Agency Action	30876	EMR	01/03/2008	2008-3/70
<u>Industrial Accidents</u>					
R612-4-2	Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund	30594	AMD	01/01/2008	2007-22/76
Natural Resources					
<u>Administration</u>					
R634-1	Americans With Disabilities Complaint Procedure	30923	5YR	01/25/2008	2008-4/47
R634-1	Americans with Disabilities Complaint Procedure (5YR EXTENSION)	30875	NSC	01/25/2008	Not Printed
<u>Parks and Recreation</u>					
R651-611	Fee Schedule	30621	AMD	01/01/2008	2007-22/80
<u>Water Rights</u>					
R655-7	Administrative Procedures for Notifying the State Engineer of Sewage Effluent Use or Change in the Point of Discharge for Sewage Effluent	30947	5YR	02/01/2008	2008-4/48
<u>Wildlife Resources</u>					
R657-5	Taking Big Game	30829	AMD	02/07/2008	2008-1/18
R657-12	Hunting and Fishing Accommodations for Disabled People	30777	AMD	01/22/2008	2007-24/19
R657-13	Taking Fish and Crayfish	30676	AMD	01/07/2008	2007-23/61
R657-23	Utah Hunter Education Program	30828	AMD	02/07/2008	2008-1/25
Pardons (Board Of)					
<u>Administration</u>					
R671-403	Restitution	30949	5YR	02/04/2008	Not Printed
Professional Practices Advisory Commission					
<u>Administration</u>					
R686-100	Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings	30951	5YR	02/04/2008	Not Printed
Regents (Board Of)					
<u>Administration</u>					
R765-607	Utah Higher Education Tuition Assistance Program	30957	5YR	02/08/2008	Not Printed
Tax Commission					
<u>Administration</u>					
R861-1A-20	Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532,9-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, 63-46b-14	30688	AMD	01/11/2008	2007-23/68

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R861-1A-24	Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10	30589	AMD	01/11/2008	2007-21/69
R861-1A-26	Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 and 63-46b-11	30717	AMD	01/11/2008	2007-23/69
R861-1A-43	Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207	30780	AMD	01/25/2008	2007-24/24
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<u>Unclaimed Property</u>					
R966-1-2	Proof Requirements and Bonds	30596	AMD	01/07/2008	2007-22/87

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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired
 NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

<u>KEYWORD</u> <u>AGENCY</u>	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>acid rain</u>					
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<u>administrative procedures</u>					
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	30810	R602-3-3	AMD	02/07/2008	2008-1/16
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<u>air pollution</u>					
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	30960	R307-102	5YR	02/08/2008	Not Printed
	30961	R307-115	5YR	02/08/2008	Not Printed
	30698	R307-115	AMD	02/08/2008	2007-23/28
	30889	R307-121-3	NSC	01/30/2008	Not Printed
	30962	R307-170	5YR	02/08/2008	Not Printed
	30699	R307-170-7	AMD	02/08/2008	2007-23/29
	30963	R307-202	5YR	02/08/2008	Not Printed
	30964	R307-203	5YR	02/08/2008	Not Printed
	30430	R307-214	AMD	01/11/2008	2007-19/12

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	30966	R307-221	5YR	02/08/2008	Not Printed
	30832	R307-221-2	NSC	02/08/2008	Not Printed
	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	Not Printed
	30833	R307-222-1	NSC	02/08/2008	Not Printed
	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	Not Printed
	30969	R307-224	5YR	02/08/2008	Not Printed
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
	30970	R307-250	5YR	02/08/2008	Not Printed
	30971	R307-310	5YR	02/08/2008	Not Printed
	30705	R307-310-2	AMD	02/08/2008	2007-23/40
	30709	R307-401-14	AMD	02/08/2008	2007-23/42
	30431	R307-405	AMD	01/11/2008	2007-19/15
	30707	R307-801	AMD	02/08/2008	2007-23/45
	30972	R307-801	5YR	02/08/2008	Not Printed
	30708	R307-840	AMD	02/08/2008	2007-23/48
	30973	R307-840	5YR	02/08/2008	Not Printed
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Environmental Quality, Air Quality	30889	R307-121-3	NSC	01/30/2008	Not Printed
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Environmental Quality, Air Quality	30707	R307-801	AMD	02/08/2008	2007-23/45
	30972	R307-801	5YR	02/08/2008	Not Printed
<u>asbestos hazard emergency response</u>					
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	30972	R307-801	5YR	02/08/2008	Not Printed
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	30859	R357-2-7	NSC	01/30/2008	Not Printed
<u>budgeting</u> Health, Health Care Financing, Coverage and Reimbursement Policy	30924	R414-304	5YR	01/25/2008	2008-4/44
	30652	R414-304	AMD	01/28/2008	2007-23/54
<u>building codes</u> Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
<u>building inspection</u> Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
<u>career education</u> Education, Administration	30885	R277-718	5YR	01/08/2008	2008-3/75
<u>CERCLA</u> Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
<u>charter schools</u> Education, Administration	30846	R277-470-7	AMD	02/07/2008	2008-1/9
<u>child abuse</u> Human Services, Child and Family Services	30716	R512-20	REP	01/07/2008	2007-23/58
	30720	R512-20	NSC	01/07/2008	Not Printed
<u>child support</u> Human Services, Recovery Services	30891	R527-39	5YR	01/10/2008	2008-3/78
	30939	R527-56	5YR	01/31/2008	2008-4/46
	30905	R527-430	5YR	01/14/2008	2008-3/78
<u>child welfare</u> Human Services, Child and Family Services	30716	R512-20	REP	01/07/2008	2007-23/58
	30720	R512-20	NSC	01/07/2008	Not Printed
<u>civil rights</u> Natural Resources, Administration	30923	R634-1	5YR	01/25/2008	2008-4/47
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	30699	R307-170-7	AMD	02/08/2008	2007-23/29
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	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
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	30959	R307-101	5YR	02/08/2008	Not Printed
<u>developmentally disabled</u> Tax Commission, Administration	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
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<u>disclosure requirements</u> Tax Commission, Administration	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
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<u>education</u> Education, Administration	30846	R277-470-7	AMD	02/07/2008	2008-1/9
	30884	R277-709	5YR	01/08/2008	2008-3/75
	30885	R277-718	5YR	01/08/2008	2008-3/75
	30888	R277-730	5YR	01/08/2008	2008-3/77
<u>education finance</u> Education, Administration	30845	R277-423	AMD	02/07/2008	2008-1/8
<u>educational testing</u> Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
<u>educator licensing</u> Education, Administration	30878	R277-518	5YR	01/08/2008	2008-3/72
<u>effluent standards</u> Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30637	R317-13	NEW	02/04/2008	2007-22/61
<u>electric generating unit</u> Environmental Quality, Air Quality	30969	R307-224	5YR	02/08/2008	Not Printed
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
<u>eligibility</u> Health, Health Care Financing, Coverage and Reimbursement Policy	30938	R414-308	5YR	01/31/2008	2008-4/46
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	30721	R512-50	NSC	01/07/2008	Not Printed
<u>emergency medical services</u> Health, Health Systems Improvement, Emergency Medical Services	30758	R426-6	AMD	02/07/2008	2007-24/14

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	30721	R512-50	NSC	01/07/2008	Not Printed
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	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
<u>hazardous air pollutant</u> Environmental Quality, Air Quality	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
<u>hazardous substances priority list</u> Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
<u>health facilities</u> Health, Health Systems Improvement, Licensing	30975	R432-16	5YR	02/11/2008	Not Printed
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	30810	R602-3-3	AMD	02/07/2008	2008-1/16
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	30637	R317-13	NEW	02/04/2008	2007-22/61
<u>infectious waste</u>					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	Not Printed
	30833	R307-222-1	NSC	02/08/2008	Not Printed
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Education, Administration	30781	R277-469	AMD	01/22/2008	2007-24/4
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Insurance, Administration	30508	R590-175	AMD	02/08/2008	2007-20/24
	30897	R590-218	5YR	01/11/2008	2008-3/80
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	30859	R357-2-7	NSC	01/30/2008	Not Printed
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Labor Commission, Antidiscrimination and Labor, Labor	30876	R610-3-4	EMR	01/03/2008	2008-3/70
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<u>liens</u>					
Commerce, Occupational and Professional Licensing	30654	R156-38a	AMD	01/07/2008	2007-23/14
<u>MACT</u>					
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	30895	R307-214	5YR	01/11/2008	2008-3/77
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	30920	R414-27	5YR	01/17/2008	2008-4/42
	30775	R414-52	AMD	02/01/2008	2007-24/12
	30776	R414-53	AMD	02/01/2008	2007-24/13
	30936	R414-301	5YR	01/31/2008	2008-4/43
	30937	R414-305	5YR	01/31/2008	2008-4/45
	30938	R414-308	5YR	01/31/2008	2008-4/46
<u>medical incinerator</u>					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	Not Printed
	30833	R307-222-1	NSC	02/08/2008	Not Printed
<u>medical transportation</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30922	R414-306	5YR	01/25/2008	2008-4/45
<u>mercury</u>					
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	30704	R307-224-2	AMD	02/08/2008	2007-23/39
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	30699	R307-170-7	AMD	02/08/2008	2007-23/29
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	30832	R307-221-2	NSC	02/08/2008	Not Printed
<u>municipal waste incinerator</u>					
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	30968	R307-223	5YR	02/08/2008	Not Printed
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	30706	R307-417	AMD	02/08/2008	2007-23/43
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<u>paint</u>					
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	30706	R307-417	AMD	02/08/2008	2007-23/43
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	30705	R307-310-2	AMD	02/08/2008	2007-23/40
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