

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Kimberly K. Hood, Executive Director
Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-538-1773. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

Correction to the Emergency Rule for Rule R986-400 (DAR No. 32856) Published in the August 15, 2009, Bulletin

The Department of Workforce Services filed a 120-day (emergency) rule for Rule R986-400 for the August 15, 2009, Bulletin. It was published under DAR No. 32856 (2009-16, pg. 65) with an effective date of 07/31/2009. The filing was complete, however, when the Division of Administrative Rules processed it, the reason for the emergency rule and the justification did not appear in the Bulletin. They appear below:

Regular rulemaking would: cause an imminent budget reduction because of budget restraints or federal requirements. The Utah Legislature cut just over \$3,000,000 in funding from the General Assistance 2010 fiscal budget. To meet those cuts, the Department has been forced to cut benefits.

Any questions regarding this error should be directed to Nancy L. Lancaster, Publications Editor, by phone: 801-538-3218, or by FAX: 801-538-1773, or by e-mail: nllancaster@utah.gov

End of the Editor's Notes Section

SPECIAL NOTICES

Health Epidemiology and Laboratory Services, Environmental Services

Public Hearing on Proposed Change to Rule R392-600

The Division of Epidemiology and Laboratory Services, Environmental Services is holding a public hearing on Wednesday, September 9, 2009, from 2 - 4 p.m. in Room 401 of the Cannon Health Building, 288 N 1460 W, Salt Lake City, Utah, to take public comment on the proposed change to Rule R392-600, Illegal Drug Operations Decontamination Standards. The proposed repeal and reenact of Rule R392-600 is under DAR No. 32775 in the July 15, 2009 (2009-14, pg. 25), issue of the Utah State Bulletin: see <http://www.rules.utah.gov/publicat/bulletin/2009/20090715/32775.htm>

Direct questions regarding this rule to: Ronald Marsden by mail at Health, Epidemiology and Laboratory Services, Environmental Services, Cannon Health Bldg, 288 N 1460 W, Salt Lake City Ut 84116-3231, by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

End of the Special Notices Section

EXECUTIVE DOCUMENTS

As part of his or her constitutional duties, the Governor periodically issues **EXECUTIVE DOCUMENTS** comprised of Executive Orders, Proclamations, and Declarations. "Executive Orders" set policy for the Executive Branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. "Proclamations" call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. "Declarations" designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution. All orders issued by the Governor not in conflict with existing laws have the full force and effect of law during a state of emergency when a copy of the order is filed with the Division of Administrative Rules. (See Section 63K-4-401).

Governor's Executive Order 2009-0006: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

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

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

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

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

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

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 that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of August 10, 2009 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of August 2009

(State Seal)

Jon M. Huntsman
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2009/0006

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between August 01, 2009, 12:00 a.m., and August 14, 2009, 11:59 p.m. are included in this, the September 01, 2009 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 October 01, 2009. The agency may accept comment beyond this date and will indicate 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 hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through December 30, 2009, 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 OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** 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 63G-3-301; Rule R15-2; and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Administrative Services, Fleet
Operations

R27-4

Vehicle Replacement and Expansion of
State Fleet

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32886

FILED: 8/13/09 2:26 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change removes obsolete language and adds a process for the purchase of expansion vehicles.

SUMMARY OF THE RULE OR CHANGE: This rule creates a justification process for nonstandard state fleet vehicle purchased as expansion vehicles. It also removes obsolete language referring to the now defunct Fleet Vehicle Advisory Committee and the previous name of the Standard State Fleet Vehicle.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(d) and Subsection 63A-9-401(4)(ii)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule change has the potential to save the state budget by creating a process to ensure the proper size vehicle is purchased in expansion.
- ◆ **LOCAL GOVERNMENTS:** This rule change will have no anticipated cost or savings to local government.
- ◆ **SMALL BUSINESSES:** This rule change will have no anticipated cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change will have no anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will not create compliance costs.

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

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
ROOM 4120 STATE OFFICE BLDG

450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Brian Fay by phone at 801-538-3502, by FAX at 801-538-1773, or by Internet E-mail at bfay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/01/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2009

AUTHORIZED BY: Margaret Chambers, Director

R27. Administrative Services, Fleet Operations.

R27-4. Vehicle Replacement and Expansion of State Fleet.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the ~~Fleet Vehicle Advisory Committee (FVAC)~~ DFO staff shall, on the basis of input from user agencies, recommend to DFO:

(a) a Standard State Fleet Vehicle (SSFV)

(b) a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the ~~FVAC~~ DFO staff, determine and establish, for each fiscal year:

(a) a SSFV

(b) the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet. A standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(3) DFO shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) DFO shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

R27-4-4. Vehicle Replacement.

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, DFO shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the ~~standard replacement vehicle for the applicable class~~ Standard State Fleet Vehicle (SSFV) ~~that has been established by DFO after reviewing the~~

~~recommendations of the FVAC DFO staff~~] that will be purchased to take the place of each vehicle on the list.

(3) All vehicles replacements will default to a SSFV.

(4) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

- (a) Passenger space
- (b) Type of items carried
- (c) Hauling or towing capacity
- (d) Police pursuit capacity
- (e) Off-road capacity
- (f) 4x4 capacity
- (g) Emergency service (police, fire, rescue services)

capacity

(h) Attached equipment capacity (snow plows, winches, etc.)

(i) Other justifications as approved by the Director of DFO or the director's designee.

(5) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of a motor vehicle with a ~~[non-standard vehicle]~~SSFV.

(6) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the Director of DFO or the director's designee.

(7) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

(8) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five working days to pick-up the replacement vehicle from DFO, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(9) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure compliance with said AFV mandates.

R27-4-5. Fleet Expansion.

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion or that a vehicle currently designated "do not replace" be placed on a replacement cycle, shall be required to provide proof of the requisite legislative approval and funding for the procurement of an expansion vehicle or the placement of a "do not replace" vehicle on a replacement cycle, and any additional

features and miscellaneous equipment, before DFO is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion or placement of a "do not replace" vehicle on a replacement cycle:

(a) A letter, signed by the agency's Chief Financial Officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Prior to the purchase of an expansion motor vehicle, DFO shall provide each agency contact with the Standard State Fleet Vehicle (SSFV) that will be purchased.

(6) All expansion vehicles will default to a SSFV.

(7) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

(a) Passenger space

(b) Type of items carried

(c) Hauling or towing capacity

(d) Police pursuit capacity

(e) Off-road capacity

(f) 4x4 capacity

(g) Emergency service (police, fire, rescue services) capacity

(h) Attached equipment capacity (snow plows, winches, etc.)

(i) Other justifications as approved by the Director of DFO or the director's designee.

(8) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the expansion motor vehicle to be a non-SSFV.

~~[(5)](9)~~ Upon receipt of proof of legislative approval of an expansion from the requesting agency, DFO shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds necessary to procure the expansion vehicle(s) from the requesting agency to DFO. In no event shall DFO purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

~~[(6)](10)~~ In the event that the requesting agency receives legislative approval for placing a "do not replace" vehicle on a replacement cycle, the requesting agency shall, in addition to

providing DFO with proof of approval and funding, provide the Division of Finance with funds, for transfer to DFO, equal to the amount of depreciation that DFO would have collected for the number of months between the time that the "do not replace" vehicle was put into service and the time that the requesting agency begins paying the applicable monthly lease rate for the replacement cycle chosen. In no event shall DFO purchase a replacement vehicle for the "do not replace" vehicle if the requesting agency fails to provide funds necessary to cover said depreciation costs.

~~(7)~~(11) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

~~(8)~~(12) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure in compliance with said AFV mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional feature(s) or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by DFO after reviewing the recommendations of the ~~[Fleet Vehicle Advisory Committee (FVAC)]~~ DFO staff, that results in an increase in vehicle cost shall be deemed a feature and miscellaneous equipment upgrade. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director, or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to DFO, a feature and/or miscellaneous equipment upgrade rate designed to recover the total cost associated with providing the additional feature(s) and/or miscellaneous

equipment, unless the requesting agency otherwise negotiates an agreement with DFO for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make DFO whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by DFO.

R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b); and

(b) a provision that said agency shall indemnify and hold DFO harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control; and

(c) a provision that said agency shall indemnify DFO for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the DFO fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus;

(i) item description or nomenclature; and
(ii) manufacturer of item; and
(iii) item identification information for ordering purposes; and

(iv) procurement source; and
(v) purchase price of item; and
expected life of item in years; and
(vi) warranty period; and
(vii) serial number;

(viii) initial installation date; and
(ix) current location of item (warehouse, vehicle number); and

(x) anticipated replacement date of item; and
(xi) actual replacement date of item; and
(xii) date item sent to surplus; and SP-1 number.

(e) a provision requiring the agency or institution with permission to install being permitted to install miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect itself from damage to,

or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold DFO harmless for any damage to, or loss of miscellaneous equipment installed in state vehicles.

(f) a provision that DFO shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment ~~an~~ Management Information System (MIS) fee to recover these costs.

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

R27-4-8. Vehicle Class Differential Upgrade.

(1) For the purposes of this rule, requests for vehicles other than the ~~planned replacement vehicle~~ SSEV established by DFO after reviewing the recommendations of the ~~Fleet Vehicle Advisory Committee (FVAC)~~ DFO staff, that results in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by DFO for that class.

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/2 ton truck replaced with a standard 3/4 ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle class differential upgrades shall be approved only when:

(a) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrade(s) at the end of the applicable replacement cycle shall pay to DFO, in full, prior to the purchase of the vehicle,

a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

(6) Agencies obtaining approval for vehicle class differential upgrade(s) prior to the end of the current vehicle's replacement cycle shall, prior to the purchase of the replacement vehicle, pay to DFO, in full, an amount equal to the difference in cost between the actual replacement vehicle and the planned replacement vehicle plus the amount of depreciation still owed on the vehicle being replaced, less the salvage value of the vehicle being replaced.

KEY: fleet expansion, vehicle replacement

Date of Enactment or Last Substantive Amendment: ~~March 6, 2008~~ 2009

Notice of Continuation: July 25, 2007

Authorizing, and Implemented or Interpreted Law: **63A-9-401(1)(a); 63A-9-401(1)(d)(v); 63A-9-401(1)(d)(ix); 63A-9-401(1)(d)(x); 63A-9-401(1)(d)(xi); 63A-9-401(1)(d)(xii); 63A-9-401(4)(ii)**

**Commerce, Occupational and
Professional Licensing
R156-75
Genetic Counselors Licensing Act
Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32883

FILED: 8/13/09 2:06 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Genetic Counselor Licensing Board reviewed this rule and need to update the rule with respect to temporary licensure and to increase the continuing education hours.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, the term "rules" has been replaced with "rule" where applicable. Also, statutory and rule citations have been updated where necessary. In Section R156-75-302b, the existing rule allows an individual to hold a temporary genetic counselor license for up to 42 months. The reason for making the temporary license available for such a long period of time was because, at one time, the American Board of Genetic Counseling (ABGC) certification examination was only administered once every three years. However, the certification exam is now offered every two years. Beginning in 2010, it will be offered once a year. The increase in the

frequency of the certification exam offering provides a basis for decreasing the maximum term of the temporary license. Paragraph (3) is amended to allow a temporary license to be issued for up to 42 months until 04/30/2010. Subsection R156-75-302b(4) is added to provide that beginning 05/01/2010, a temporary license may be issued for a period of up to 15 months and to provide that if a temporary licensee fails the exam, the licensee can reapply for a second temporary license. In Section R156-75-304, the number of required continuing education hours for each 2-year period is being increased from 30 hours to 50 hours. The Board felt this change was necessary in order to make the continuing education requirement consistent with ABGC certification requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-75-302(2) and Subsection 58-75-303(2)

ANTICIPATED COST OR SAVINGS TO:

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

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. The proposed amendments require that licensed genetic counselors complete 20 more hours of continuing education every 2 years, which would cause an increase in the amount of money that a licensee spends on continuing education. The cost of continuing education for licensed genetic counselors ranges from \$25 to \$40 for every 10 hours of continuing education, plus registration and transportation costs if applicable. The Division currently has 35 licensed genetic counselors which would result in an aggregate cost of approximately \$2,800 every 2 years due to the increased number of continuing education hours required. It should be noted that many licensees already complete 50 hours of continuing education every 2 years in order to maintain their ABGC certification, so that aggregate costs shown herein may be less.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. The proposed amendments require that licensed genetic counselors complete 20 more hours of continuing education every 2 years, which would cause an increase in the amount of money that a licensee spends on continuing education. The cost of continuing education for licensed genetic

counselors ranges from \$25 to \$40 for every 10 hours of continuing education, plus registration and transportation costs if applicable. The Division currently has 35 licensed genetic counselors which would result in an aggregate cost of approximately \$2,800 every 2 years due to the increased number of continuing education hours required. It should be noted that many licensees already complete 50 hours of continuing education every 2 years in order to maintain their ABGC certification, so that aggregate costs shown herein may be less.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. The proposed amendments require that licensed genetic counselors complete 20 more hours of continuing education every 2 years, which would cause an increase in the amount of money that a licensee spends on continuing education. The cost of continuing education for licensed genetic counselors ranges from \$25 to \$40 for every 10 hours of continuing education, plus registration and transportation costs if applicable. It should be noted that many licensees already complete 50 hours of continuing education every two years in order to maintain their ABGC certification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing decreases the length of time for temporary licenses as the required examination is offered more frequently, requires additional continuing education hours to become more consistent with national certification requirements and makes other technical amendments. No significant fiscal impact to businesses is anticipated given that most licensees already complete additional continuing education for national certification purposes.

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:

◆ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 09/29/2009 1:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-75. Genetic Counselors Licensing Act Rule[s].

R156-75-101. Title.

~~[These rules are]~~ This rule is known as the "Genetic Counselors Licensing Act Rule[s]."

R156-75-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 75, as defined or used in ~~[these rules]~~ this rule:

(1) "Active candidate status", as used in Subsection R156-75-302b(1), describes an individual who has been approved by the American Board of Genetic Counseling (ABGC) to sit for the certification exam in genetic counseling.

(2) "General supervision", as used in ~~[Section]~~ Subsection R156-75-302b(2), means the supervisor has the overall responsibility to assess the work of the supervisee including at least twice monthly face to face meetings with chart review and weekly case review. An annual supervision contract signed by the supervisor and supervisee must be on file with both parties.

(3) "Qualified continuing education", as used in ~~[these rules]~~ this rule, means continuing education that meets the standards set forth in Section R156-75-304.

R156-75-103. Authority - Purpose.

~~[These rules are]~~ This rule is adopted by the ~~[d]~~ Division under the authority of Subsection 58-1-106(1) to enable the ~~[d]~~ Division to administer Title 58, Chapter 75.

R156-75-302b. Qualifications for Licensure - Temporary License.

In accordance with Subsection 58-75-302(2), the requirements for temporary licensure are established as follows:

(1) An applicant shall meet all the qualifications for licensure as established in Subsection 58-75-302(1) with the exception of Subsection 58-75-302(1)(e), and have active candidate status conferred by the ~~[American Board of Genetic Counseling]~~ ABGC.

(2) An individual practicing under the authority of a temporary license must practice under the general supervision of a licensed genetic counselor or a licensed physician certified in clinical genetics by the American Board of Medical Genetics.

(3) ~~[A]~~ Before May 1, 2010, a temporary license may be issued for a period of up to 42 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination. If ~~[an]~~ the applicant fails the first sitting of the ~~[American Board of Genetic Counseling]~~ ABGC certification exam, ~~[he]~~ the applicant may reapply for a second temporary license.

(4) Beginning May 1, 2010, a temporary license may be issued for a period of up to 15 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination. If the applicant fails the first sitting of the ABGC certification exam, the applicant may reapply for a second temporary license.

~~[(4)]~~ 5 A temporary license will not be issued if the applicant has failed the ~~[American Board of Genetic Counseling]~~ ABGC certification examination more than once.

~~[(5)]~~ 6 A temporary license shall expire upon the earliest of one of the following:

- (a) issuance of full licensure;
- (b) 30 days after failing the certification exam; or
- (c) the date printed on the temporary license.

R156-75-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 75 is established by rule in Section R156-1-308a(1).

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

R156-75-304. Continuing Education.

(1) In accordance with Subsections 58-1-203~~[(7)]~~ (1)(g), 58-1-308(3)(b) and Section 58-75-303, there is created a continuing education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 75.

(2) Continuing education shall consist of ~~[30]~~ 50 hours ~~[(3)]~~ 5 CEU's) in each preceding two year licensing cycle and must be approved for recertification purposes by the ~~[American Board of Genetic Counseling]~~ ABGC.

(3) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(4) A licensee who documents ~~[he is subjected to]~~ circumstances which prevent ~~[that]~~ the licensee from meeting the continuing professional education requirements established under this section may apply to be excused from the requirement for a period of up to two years. It is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

KEY: licensing, occupational licensing, genetic counselors

Date of Enactment or Last Substantive Amendment: ~~[April 2, 2002]~~ 2009

Notice of Continuation: January 9, 2007

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-75-302(2); 58-75-303(2)

Commerce, Occupational and
Professional Licensing
R156-77
Direct-Entry Midwife Act Rules

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 32884
FILED: 8/13/09 2:11 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Senator Margaret Dayton sponsored S.B. 93 during the 2008 legislative session. That bill created the Direct-Entry Midwife Administrative Rules Committee and charged the Committee to make changes to the Direct-Entry Midwife Act Rule regarding the scope of practice for a licensed direct-entry midwife in Utah. The bill also created a new classification of services called "mandatory consultation" and placed several conditions identified in the rule into the category of mandatory consultation. As a result of this, the rule needs to be updated to reflect the statutory changes. (DAR NOTE: S.B. 93 (2008) is found at Chapter 365. Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule the term "rules" has been replaced with "rule" where applicable. In Section R156-77-102, adds definitions for "approved continuing education", "C-section", "LDEM (licensed direct-entry midwife) Outcome Database", "TOLAC" (trial of labor after cesarean section), "VBAC" (vaginal birth after cesarean section), and "weeks gestation". In Section R156-77-303, the proposed amendments require specific continuing education hours in the area of intrapartum fetal monitoring to renew a direct-entry midwife license and provides that a licensee must be able to document completion of the continuing education hours upon request of the Division. In Section R156-77-502, updates the MANA (Midwives Alliance of North America) Standards which are incorporated by reference to the 2005 edition. In Section R156-77-601, clarifies, rearranges, and establishes conditions that require consultation, mandatory consultation, collaboration, referral, waiveable transfer, and mandatory transfer. Section R156-77-602 is a new section which adds informed consent. This section adds to the standards for informed consent that already exists in the rule. Ten additional pieces of information are being added for a client with a previous c-section who is attempting a vaginal delivery after the c-section to know to fully provide informed consent for treatment. Sections R156-77-603 and R156-77-604 have been renumbered due to the addition of new Section R156-77-602. In Section R156-77-604, added that a licensee shall submit to the Division a copy of data submitted to MANA if so requested by the Division. Also added that a licensee must also submit outcome data to the LDEM Outcome Database at least annually.

MATERIALS INCORPORATED BY REFERENCE:

Updates *MANA Standards and Qualifications for the Art and Practice of Midwifery*, published by Midwives Alliance of North America (MANA), 08/13/2009

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection

58-1-202(1)(a) and Subsection 58-77-202(4) and Subsection 58-77-601(2)

ANTICIPATED COST OR SAVINGS TO:

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

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification and clients that utilize the services of a licensed direct-entry midwife. Local governments do not employ or utilize the services a licensed direct-entry midwives. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification, and clients who utilize the services of a licensed direct-entry midwife. The governing statute, Title 58, Chapter 77, does not mandate reimbursement for the services of a licensed direct-entry midwife so there should be no general affect on a small business. However, a licensed direct-entry midwife could own a small business and the proposed changes to the standards may limit the type of clients accepted into the practice. The existing rule allows VBACs (vaginal birth after c-section); but the amended statute and proposed rule amendments establish some restrictions on the type or timing of a patient seeking a home birth after having had a c-section. This may cause a minimal loss of revenue to the licensed direct-entry midwife of approximately \$1,500 - \$2,000 per client.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification, and clients who utilize the services of a licensed direct-entry midwife. The governing statute, Title 58, Chapter 77, does not mandate reimbursement for the services of a licensed direct-entry midwife business. However, a licensed direct-entry midwife could own a small business and the proposed changes to the standards may limit the type of clients accepted into the practice. The existing rule allows VBACs (vaginal birth after c-section); but the amended statute and proposed rule amendments establish some restrictions on the type or timing of a patient seeking a home birth after having had a c-section. This may cause a minimal loss of revenue to the licensed direct-entry midwife of approximately \$1,500 - \$2,000 per client. A client who has had a c-section may not be able to attempt a home birth with a licensed direct-entry midwife because of the proposed amendments. Such a client would be required to birth in an acute care facility attended by a physician and therefore the costs of delivering the baby could increase to \$4,000 - \$6,000 on average.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification, and clients who utilize the services of a licensed direct-entry

midwife. As indicated above, the license direct-entry midwife may lose a few potential clients who would not be allowed to utilize the services of the midwife. This may cause a minimal loss of revenue to the licensed direct-entry midwife of approximately \$1,500 - \$2,000 per client. A client who has had a c-section may not be able to attempt a home birth with a licensed direct-entry midwife because of the proposed amendments. Such a client would be required to birth in an acute care facility attended by a physician and therefore the costs of delivering the baby could increase to \$4,000 - \$6,000 on average.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated beyond that considered in the passage of Chapter 365, Laws of Utah 2008 (S.B. 93) and that addressed in the rule filing summary.

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:
♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/17/2009 3:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-77. Direct-Entry Midwife Act Rule[s].

R156-77-101. Title.

~~[These rules are]~~ This rule is known as the "Direct-Entry Midwife Act Rule[s]."

R156-77-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 77, as used in Title 58, Chapter 77 or ~~[these rules]~~ this rule:

(1) "Accredited school", as used in ~~[these rules]~~ this rule, includes any midwifery school that has been granted pre-accredited status by MEAC.

(2) "Apgar score", as used in Section R156-77-601, means an index used to evaluate the condition of a newborn based on a rating of 0, 1, or 2 for each of the five characteristics of color, heart rate, response to stimulation of the sole of the foot, muscle tone, and respiration with 10 being a perfect score.

(3) "Appropriate provider", as used in Sections R156-77-601 and 602, means a licensed provider who is an appropriate contact person based on the provider's level of education and scope of practice.

(4) "Approved continuing education", as used in Subsection R156-77-303(3)(c), means:

(a) continuing education that has been approved by a nationally recognized professional organization that approves health related continuing education;

(b) a course offered by a post-secondary education institution that is accredited by an accrediting board recognized by the U.S. Department of Education, an MEAC approved midwifery program or accredited midwifery school, or an MEAC approved program or course; or

(c) continuing education that is sponsored or presented by MANA or any subgroup thereof, a government agency, a recognized direct-entry midwifery or health care association.

([4]5) "Collaborate", as used in Section R156-77-601, means the process by which an LDEM and another licensed health care provider jointly manage a specific condition of a client according to a mutually agreed-upon plan of care. The LDEM continues midwifery management of the client and may follow through with the medical management as agreed upon with the provider.

([5]6) "Consultation", as used in Section R156-77-601, means the process by which the LDEM discusses client status with an appropriate licensed health care provider by phone, written note, or in person. The provider may give a recommendation for management, but does not assume the management of the client.

([6]7) "CPR", as used in ~~[these rules]~~ this rule, means cardiopulmonary resuscitation.

(8) "C-section", as used in this rule, means a cesarean section.

([7]9) "LDEM", as used in ~~[these rules]~~ this rule, means a licensed direct entry midwife licensed under Title 58, Chapter 77.

(10) "LDEM Outcome Database", as used in Section R156-77-604, means a web based application created by the Division to collect data regarding the outcome of pregnancies and deliveries managed by an LDEM.

([8]11) "MANA", as used in ~~[these rules]~~ this rule, means the Midwives Alliance of North America.

([9]12) "MEAC", as used in ~~[these rules]~~ this rule, means the Midwifery Education Accreditation Council.

([10]13) "Midwifery Care", as used in ~~[these rules]~~ this rule, has the same meaning as the practice of direct-entry midwifery as defined in Subsection 58-77-102([7]8).

([11]14) "NARM", as used in ~~[these rules]~~ this rule, means the North American Registry of Midwives.

([12]15) "Refer", as used in Section R156-77-601, means the process by which an LDEM directs the client to an appropriate licensed health care provider for management of a specific condition. The LDEM continues midwifery management of the client.

(16) "TOLAC", as used in Section R156-77-602, means a trial of labor after cesarean section.

(~~14~~)17) "Transfer", as used in Section R156-77-601, means the process by which an LDEM relinquishes management of a client to an appropriate licensed health care provider. The LDEM may provide on-going support services as appropriate.

(~~14~~)18) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 77, is further defined, in accordance with Subsection 58-1-203(~~5~~1)(e), in Section R156-77-502.

(19) "VBAC", as used in this rule, means a vaginal birth after cesarean section.

(20) "Weeks gestation", as used in this rule, means the age of a pregnancy using accepted pregnancy dating criteria such as menstrual or ultrasound dating. A gestation week starts at the beginning of that week; therefore, 36 weeks gestation is the start of the 36th week of pregnancy.

R156-77-103. Authority - Purpose.

[These rules are]This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 77.

R156-77-302b. Qualifications for licensure - Education Requirements.

In accordance with Subsections 58-1-203(1)(b), 58-1-301(3), and 58-77-302(6), the pharmacology course requirement for licensure in Subsection 58-77-302(6) is defined herein. The course must be:

(1) offered by a post-secondary educational institution that is accredited by an accrediting board recognized by the Council for Higher Education Accreditation of the American Council on Education, a MEAC approved midwifery program or accredited midwifery school, or be a MEAC approved program or course; and

(2) at least eight clock hours in length and include basic pharmacotherapeutic principles and administration of medications including the drugs listed in Subsections 58-77-102(~~7~~8)(f)(i) through (ix); or

(3) a general pharmacology course of at least 20 clock hours in length from a health-related course of study.

R156-77-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 77 is established by rule in Subsection R156-1-308a(1).

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

(3) Each applicant for renewal shall comply with the following:

(a) submit documentation of holding a current Certified Professional Midwife certificate in good standing with NARM; ~~and~~

(b) submit documentation of current certifications in adult and infant CPR, and newborn resuscitation that meets the criteria established in R156-77-302a; and

(c) complete at least two clock hours of approved continuing education in intrapartum fetal monitoring during each preceding two year licensure cycle which may be part of the hours

required in Subsection (a) to maintain certification provided the hours meet the requirements established by NARM.

(4) A licensee must be able to document completion of the continuing education hours upon the request of the Division. Such documentation shall be retained until the next licensure renewal cycle.

R156-77-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure to practice in accordance with the knowledge, clinical skills, and judgments described in the MANA Core Competencies for Basic Midwifery Practice (1994), which is hereby adopted and incorporated by reference; and

(2) failing as a midwife to follow the MANA Standards and Qualifications for the Art and Practice of Midwifery (~~1997~~2005), which is hereby adopted and incorporated by reference.

R156-77-601. Standards of Practice.

Except as provided in Subsection 58-77-601(3)(b), and in accordance with Subsection 58-77-601(2), the standards and circumstances that require an LDEM to recommend and facilitate consultation, collaboration, referral, transfer, or mandatory transfer of client care are established herein. These standards are at a minimum level and are hierarchical in nature. If the standard requires at least consultation for a condition, an LDEM may choose to collaborate, refer, or transfer the care of the client.

(1) Consultation:

(a) antepartum:

(i) suspected intrauterine growth restriction;

(ii) severe vomiting unresponsive to LDEM treatment;

(iii) pain unrelated to common discomforts of pregnancy;

(iv) presence of condylomata that may obstruct delivery;

(v) anemia unresponsive to LDEM treatment;

(vi) history of genital herpes;

(vii) suspected or confirmed fetal demise after 14 weeks gestation;

(viii) suspected multiple gestation;

(ix) confirmed chromosomal or genetic aberrations;

(x) hepatitis C; ~~and~~

(xi) prior c-section without a second trimester ultrasound to determine the location of placental implantation; and

(xii) any other condition in the judgment of the LDEM requires consultation.

(2) Mandatory Consultation:

(a) incomplete miscarriage after 14 weeks gestation;

(b) failure to deliver by 42 weeks gestation;

(c) a fetus in the breech position after 36 weeks gestation;

(d) any sign or symptom of:

(i) placenta previa;

(ii) deep vein thrombosis or pulmonary embolus; or

(iii) vaginal bleeding after 20 weeks gestation, in a woman with a history of a c-section who has not had an ultrasound performed;

(e) Rh isoimmunization or other red blood cell isoimmunization known to cause erythroblastosis fetalis; or

(f) any other condition or symptom in the judgment of the LDEM that may place the health of the pregnant woman or unborn child at unreasonable risk.

~~(2)3~~ Collaborate:

(a) antepartum:

- (i) infection not responsive to LDEM treatment;
- (ii) seizure disorder affecting the pregnancy;
- (iii) history of cervical incompetence with surgical therapy;

(iv) ~~[mild hypertension defined as a sustained diastolic blood pressure of between 90 mm and 100 mm in two readings at least six hours apart]increase in blood pressure with a systolic pressure greater than 140mm or a diastolic pressure greater than 90mm in two readings at least six hours apart, no more than trace proteinuria or other evidence of preeclampsia; and~~

(vi) any other condition in the judgment of the LDEM requires collaboration;

(b) postpartum:

- (i) infection not responsive to LDEM treatment; and
- (ii) any other condition in the judgment of the LDEM requires collaboration.

~~(3)4~~ Refer:

(a) antepartum:

- (i) thyroid disease;
- (ii) changes in the breasts not related to pregnancy or lactation;

(iii) severe psychiatric illness responsive to treatment;

(iv) heart disease that has been determined by a cardiologist to have potential to affect or to be affected by pregnancy, labor, or delivery; and

(v) any other condition in the judgment of the LDEM requires referral;

(b) postpartum:

- (i) bladder dysfunction;
- (ii) severe depression; and

(iii) any other condition in the judgment of the LDEM requires referral;

(c) newborn:

- (i) birth injury requiring on-going care;
- (ii) minor congenital anomaly;
- (iii) jaundice beyond physiologic levels;
- (iv) loss of 15% of birth weight;
- (v) inability to suck or feed; and

(vi) any other condition in the judgment of the LDEM requires referral.

~~(4)5~~ Transfer, however may be waived in accordance with Subsection 58-77-601(3)(b):

(a) antepartum:

- (i) current drug or alcohol abuse;
- (ii) ~~[greater than a one and one-half pound estimated weight discrepancy between fetuses in a multiple gestation;~~

~~(iii) current diagnosis of cancer;~~

~~(iv) persistent oligohydramnios not responsive to LDEM treatment;~~

(v) confirmed intrauterine growth restriction;[

~~(vi) confirmed breech presentation;~~

~~(vii) twins;~~

~~(viii) two previous c-sections;]~~

(v) prior c-section with unknown uterine incision type provided a reasonable effort has been made to determine the uterine scar type and the client has signed an informed consent that meets the standards established in Section R156-77-602;

~~(ix)vi~~ history of preterm delivery less than 34 weeks gestation;

~~(x)vii~~ history of severe postpartum bleeding;

~~(xi)viii~~ primary genital herpes outbreak;

~~(xii)ix~~ ~~[mild preeclampsia defined as a sustained diastolic blood pressure of 90 mm or greater in two readings at least six hours apart and 1+ to 2+ proteinuria]increase in blood pressure with a systolic pressure greater than 140mm or a diastolic pressure greater than 90mm in two readings at least six hours apart, and 1+ to 2+ proteinuria confirmed by a 24 hour urine collection of greater than 300 mg of protein; and[~~

~~(xiii) gestation greater than 43 weeks; and]~~

~~(xiv)~~ any other condition in the judgment of the LDEM may require transfer;

(b) intrapartum:

(i) ~~[non-reassuring fetal heart rate pattern indicative of fetal distress that does not respond to LDEM treatment;~~

~~(ii)]visible genital lesions suspicious of herpes virus infection;~~

~~(iii)i~~ ~~[moderate]severe~~ hypertension defined as a sustained diastolic blood pressure of greater than 110 mm or a systolic pressure of greater than 160 mm~~[in two readings at least six hours apart];~~

~~(iv)iii~~ excessive vomiting, dehydration, acidosis, or exhaustion unresponsive to LDEM treatment; and

(iv) any other condition in the judgment of the LDEM may require transfer;

(c) postpartum:

(i) retained placenta; and

(ii) any other condition in the judgment of the LDEM may require transfer;

(d) newborn:

(i) gestational age assessment less than ~~[thirty-six (36)]~~ weeks gestation;

(ii) major congenital anomaly not diagnosed prenatally;

(iii) persistent hyperthermia or hypothermia unresponsive to LDEM treatment; and

(iv) any other condition in the judgment of the LDEM may require transfer.

~~(5)6~~ Mandatory transfer:

(a) antepartum:

(i) severe preeclampsia or severe pregnancy-~~[]~~induced hypertension as evidenced by:

(A) a systolic pressure greater than 160mm or a diastolic pressure greater than 110mm in two readings at least six hours apart, or 3+ to 4+ proteinuria, or greater than 5gms of protein in a 24 hour urine collection; or

(B) a systolic pressure greater than 140mm or a diastolic pressure greater than 90mm in two readings at least six hours apart, at least 1+ proteinuria, and one or more of the following:

(1) epigastric pain;

(2) headache;

(3) visual disturbances; or

(4) decreased fetal movement;

(ii) eclampsia or hemolysis, elevated liver enzymes, and low platelets syndrome (HELLP);

(iii) documented platelet count less than 75,000 platelets per mm³ of blood;

(iv) ~~diagnosed partial placenta previa at week 36, or complete placenta previa at 32 weeks~~placenta previa after 27 weeks of gestation;

(v) confirmed ectopic pregnancy;

(vi) severe psychiatric illness non-responsive to treatment;

(vii) human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS);

(viii) ~~mono amniotic multiple gestation~~diagnosed deep vein thrombosis or pulmonary embolism;

(ix) ~~[twin-to-twin transfusion syndrome]~~multiple gestation;

(x) ~~three or more previous c-sections~~no onset of labor by 43 weeks gestation;

(xi) ~~[higher order (greater than two) multiple gestations]~~more than two prior c-sections;

(xii) prior c-section with a known uterine classical, inverted T or J incision, or an extension of an incision into the upper uterine segment;

(xiii) prior c-section without an ultrasound that rules out placental implantation over the uterine scar obtained no later than 35 weeks gestation or prior to commencement of care if the care is sought after 35 weeks gestation;

(xiv) prior c-section without a signed informed consent document meeting the standards established in Section R156-77-602;

(xv) prior c-section with a gestation greater than 42 weeks gestation;

(~~xiii~~xvi) [RH]Rh isoimmunization or other red blood cell isoimmunization known to cause erythroblastosis fetalis, with an antibody titre of greater than 1:8[in a mother carrying Rh positive baby or a baby of unknown Rh type];

(~~xiii~~xvii) insulin-dependent diabetes;

(~~xiv~~xviii) significant vaginal bleeding after 20 weeks gestation not consistent with normal pregnancy and posing a continuing risk to mother or baby; and

(~~xv~~xiv) any other condition in the judgment of the LDEM ~~[must be transferred]~~that could place the life or long-term health of the pregnant woman or unborn child at risk;

(b) intrapartum:

(i) signs of uterine rupture;

(ii) presentation(s) not compatible with spontaneous vaginal delivery;

(iii) fetus in breech presentation during labor unless delivery is imminent;

(~~iii~~iv) progressive labor prior to [36]37 weeks gestation except miscarriages, confirmed fetal death, or congenital anomalies incompatible with life;

(~~iv~~v) prolapsed umbilical cord unless birth is imminent;

(vi) clinically significant abdominal pain inconsistent with normal labor;

(vii) seizure;

(viii) ~~[complete placenta previa]~~undiagnosed multiple gestation, unless delivery if imminent;

(~~viii~~ix) suspected chorioamnionitis;

(x) prior c-section with cervical dilation progress in the current labor of less than one centimeter in three hours once labor is active;

(xi) non-reassuring fetal heart pattern indicative of fetal distress that does not immediately respond to treatment by the LDEM, unless delivery is imminent;

(xii) moderate thick, or particulate meconium in the amniotic fluid unless delivery is imminent;

(xiii) failure to deliver after three hours of pushing unless delivery is imminent; or

(~~ix~~xiv) any other condition in the judgment of the LDEM ~~[must be transferred]~~that would place the life or long-term health of the pregnant woman or unborn child at significant risk if not acted upon immediately;

(c) postpartum:

(i) uncontrolled hemorrhage;

(ii) maternal shock that is unresponsive to LDEM treatment;

(iii) severe psychiatric illness non-responsive to treatment;

(iv) signs of deep vein thrombosis or pulmonary embolism; and

(v) any other condition in the judgment of the LDEM ~~[must be transferred]~~that could place the life or long-term health of the mother or infant at significant risk if not acted upon immediately;

(d) newborn:

(i) non-transient respiratory distress;

(ii) non-transient pallor or central cyanosis;

(iii) Apgar score at ten minutes of less than six;

(iv) low heart rate of less than 60 beats per minute after one complete neonatal resuscitation cycle;

(v) absent heart rate except with confirmed fetal death or congenital anomalies incompatible with life, or shoulder dystocia resulting in death;

(vi) hemorrhage;

(vii) seizure;

(viii) persistent hypertonia, lethargy, flaccidity or irritability, or jitteriness;

(ix) inability to urinate or pass meconium within the first 48 hours of life; and

(x) any other condition in the judgment of the LDEM must be transferred.

R156-77-602. Informed Consent.

In addition to the standards for informed consent established in Subsection 58-77-601(1)(b), an informed consent for a client with a previous c-section, must include the following information about a VBAC:

(1) TOLAC is associated with the risk of uterine rupture. Uterine rupture can cause brain damage or death of the baby and result in serious hemorrhage or hysterectomy in the mother.

(2) VBAC poses more medical risks to the baby than a scheduled repeat c-section.

(3) Repeat c-section poses more medical risks to the mother than VBAC.

(4) C-section after a failed TOLAC is associated with more risks than a c-section done before labor has begun.

(5) If a complication occurs from a TOLAC outside of a hospital setting, the risk to mother and baby may be higher due to the inherent delay in obtaining access to hospital care.

(6) Multiple c-sections are associated with, but not limited to, increased risks due to abnormal placental implantation, hemorrhage requiring hysterectomy, and other surgical and postoperative complications.

(7) The risks associated with TOLAC after two c-sections are greater than those after one c-section.

(8) Risks associated with TOLAC when the type of uterine scar is unknown are greater than when the uterine scar is known to be low transverse.

(9) A 2004 national birth center study revealed women who attempt TOLAC in a birth center setting have an overall transfer rate of 24%, and a vaginal delivery rate of 87%.

(10) A woman with no previous vaginal birth and two previous c-sections for documented failure to progress, has a very low vaginal delivery success rate.

R156-77-[602]603. Procedures for the Termination of Midwifery Care.

(1) The procedure to terminate midwifery care for a client who has been informed that she has or may have a condition indicating the need for medical consultation, collaboration, referral, or transfer is established herein:

(a) provide no fewer than three business days written notice, unless an emergency, during which the LDEM shall continue to provide midwifery care, to enable the client to select another licensed health care provider;

(b) provide a referral; and

(c) document the termination of care in the client's records.

(2) The procedure to terminate midwifery care to a client who has been informed that she has or may have a condition indicating the need for mandatory transfer is established herein:

(a) have the client sign a release of care indicating the LDEM has terminated providing midwifery care as of a specific date and time; or

(b) verbally instruct the client of the termination of midwifery care and document said instruction in the client record;

(c) make a reasonable effort to convey significant information regarding the client's condition to the receiving provider; and

(d) if possible, when transferring the client by ambulance or private vehicle, the LDEM accompanies the client.

R156-77-[603]604. Submission of Outcome Data.

In accordance with Subsection 58-77-601(5), an individual licensed as an LDEM must submit outcome data electronically to the MANA's Division of Research on the form prescribed by MANA, and in accordance to the policies and procedures established by MANA. Upon request of the Division, the licensee shall submit to the Division a copy of the data submitted to MANA. A licensee must also submit outcome data to the LDEM Outcome Database at least annually.

KEY: licensing, midwife, direct-entry midwife

Date of Enactment or Last Substantive Amendment: [September 14, 2006]2009

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-77-202(4) 58-77-601(2)

Commerce,
Occupational and Professional
Licensing
R156-78B-9
Action upon Request - Scheduling
Procedures - Continuances

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32885

FILED: 8/13/09 2:20 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is proposing an amendment to clarify the filing requirement that a Request for Prelitigation Hearing needs to include documentation that the Notice of Intent was served in accordance with Section 78B-3-412.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-78B-9(2)(b), the amendment adds "and documentation that the notice was served in accordance with Section 78B-3-412".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 78B-3-416(1)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendment only applies to the prelitigation panel review process and does not apply to local governments; therefore no costs or savings are anticipated.

♦ **SMALL BUSINESSES:** The proposed amendment is only clarifying what documentation is required to be submitted with a Request for Prelitigation Hearing. The documentation has always been required to be submitted, but the change is now being added to the rule. No costs or savings are anticipated for either small business or other persons since this amendment is only clarifying what documentation is required with respect to a prelitigation proceeding.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment is only clarifying what documentation is required to be submitted with a Request for

Prelitigation Hearing. The documentation has always been required to be submitted, but the change is now being added to the rule. No costs or savings are anticipated for either small business or other persons since this amendment is only clarifying what documentation is required with respect to a prelitigation proceeding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment is only clarifying what documentation is required to be submitted with a Request for Prelitigation Hearing. The documentation has always been required to be submitted, but the requirement is now being added to the rule. No costs or savings are anticipated for either small business or other persons since this amendment is only clarifying what documentation is required with respect to a prelitigation proceeding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule change clarifies that a person requesting a prelitigation panel must provide the Division documentation that a notice of intent to commence action has been properly served. No fiscal impact to businesses is anticipated from this amendment.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.**

R156-78B-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78B-3-416(2)(a);

(b) the request includes a copy of the notice in accordance with Subsection 78B-3-416(2)(b) and documentation that the notice was served in accordance with Section 78B-3-412; and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78B-3-416(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78B-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the division, on forms available from the division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the division shall schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the division consent to a shorter period of time.

(e) The division shall thereafter promptly select and appoint a panel in accordance with Subsections 78B-3-416(4) and (5) and this rule.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable

to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the division, on forms approved by the division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the division shall establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the division shall issue a notice of hearing resetting a date, time and a place for the prelitigation panel hearing.

KEY: medical malpractice, prelitigation
Date of Enactment or Last Substantive Amendment:
[December 8, 2008]2009
Notice of Continuation: April 9, 2007
Authorizing, and Implemented or Interpreted Law:
78B-3-416(1)(b)

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-501
 Preadmission and Continued Stay
 Review**

NOTICE OF PROPOSED RULE
 (Repeal and Reenact)
 DAR FILE NO.: 32882
 FILED: 8/13/09 1:18 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to clarify provisions that include prior authorization, nursing facility responsibilities, preadmission criteria, readmission criteria, and eligibility that comes through the retroactive authorization process.

SUMMARY OF THE RULE OR CHANGE: In contrast to the old rule, this new rule adds definitions that clarify standards and certification requirements for individuals that reside in long-term care facilities. It further adds language to clarify

responsibilities of nursing facilities to meet Preadmission Screening and Resident Review (PASRR) requirements. It also includes new subsections to separate and clarify preadmission and readmission criteria, and adds a new subsection with new information on retroactive authorization. The old rule, on the other hand, contains a section on grace days that is now replaced with a section on the retroactive authorization process to determine eligibility. It also contains a list of requirements for preadmission authorization that the Department no longer requires in making a medical determination for nursing facility care.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Allowing facilities to seek retroactive authorization may result in a small increase to the state's budget but it is small in comparison to the impact on small businesses that would otherwise be unable to bill for services provided during the period when Medicaid financial eligibility is granted, but medical eligibility for nursing facility services had not yet been determined.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because they do not fund or provide nursing facility care to Medicaid clients.
- ◆ **SMALL BUSINESSES:** Allowing facilities to seek retroactive authorization may result in minimal savings to small businesses that would have otherwise been unable to bill for services provided during the period when Medicaid financial eligibility had been granted, but medical eligibility for nursing facility services had not yet been determined.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Allowing facilities to seek retroactive authorization may result in minimal savings to businesses that would have otherwise been unable to bill for services provided during the period when Medicaid financial eligibility had been granted, but medical eligibility for nursing facility services had not yet been determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to the rule will not result in compliance costs and will lessen the administrative activities required of both businesses and the Department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will protect business from a loss of Medicaid reimbursement if a person is admitted that does not appear to meet Medicaid eligibility criteria, but application is made within 90 days. Small overall impact to Medicaid state funds, but a potentially significant impact on an individual business.

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 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 NO LATER THAN 5:00 PM ON 10/01/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2009

AUTHORIZED BY: David Sundwall, Executive Director

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

[R414-501. Preadmission and Continued Stay Review.

R414-501-1. Introduction and Authority.

This rule implements 42 USC 1396r(b)(3), (e)(5), and (f)(6)(B), and 42 CFR 456.1 through 456.23, and 456.350 through 456.380, by requiring the evaluation of each resident's need for admission and continued stay in a nursing facility. 42 USC 1396r, requirements for nursing facilities, and 42 CFR 483, requirements for states and long term care facilities, are adopted and incorporated by reference.

R414-501-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to Rules R414-501 through R414-503:

(1) "Activities of daily living" are defined in 42 CFR 483.25(a)(1), and further includes adaptation to the use of assistive devices and prostheses intended to provide the greatest degree of independent functioning.

(2) "Categorical determination" means a determination made pursuant to 42 CFR 483.130 and ATTACHMENT 4.39-A of the State Plan.

(3) "Code of Federal Regulations (CFR)" means the 1999 edition unless otherwise noted.

(4) "Continued stay review" means a periodic, supplemental, or interim review of a resident performed by a department health care professional either by telephone or on-site review.

(5) "Discharge planning" means planning that ensures that the resident has an individualized planned program of post-discharge continuing care that:

(a) states the medical, functional, behavioral and social levels necessary for the resident to be discharged to a less restrictive setting;

(b) includes the steps needed to move the resident to a less restrictive setting;

(c) establishes the feasibility of the resident's achieving the levels necessary for discharge; and

(d) states the anticipated time frame for that achievement.

(6) "Health care professional" means a duly licensed or certified physician, physician assistant, nurse practitioner, physical

therapist, speech therapist, occupational therapist, registered professional nurse, licensed practical nurse, social worker, or qualified mental retardation professional.

(7) "Level I screening" means the preadmission identification screening discussed in R414-503-3.

(8) "Level II evaluation" means the preadmission evaluation and annual resident review for serious mental illness or mental retardation discussed in R414-503-4.

(9) "Medicaid resident" means a resident who is a Medicaid recipient.

(10) "Mental retardation" is defined in 42 CFR 483.102(b)(3) and includes "persons with related conditions" as defined in 42 CFR 435.1009.

(11) "Nursing facility" is defined in 42 USC 1396r(a), and also includes an intermediate care facility for the mentally retarded as defined in 42 USC 1396d(d).

(12) "Resident" means a person residing in a Medicaid-certified nursing facility.

(13) "Serious mental illness" is defined in 42 CFR 483.102(b)(1).

(14) "Significant change" means a major change in the resident's physical, mental, or psychosocial status that is not self-limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan.

(15) "Skilled care" means those services defined in 42 CFR 409.32.

(16) "Specialized rehabilitative services" means those services provided pursuant to 42 CFR 483.45 and R432-150-22.

(17) "Specialized services" means those services provided pursuant to 42 CFR 483.120 and ATTACHMENT 4.39 of the State Plan.

(18) "United States Code (USC)" means the 1993 edition unless otherwise noted.

(19) "Working days" means all days except Saturdays, Sundays, and recognized state holidays.

R414-501-3. Preadmission Authorization.

(1) A nursing facility shall perform a preadmission assessment when admitting an applicant, including an applicant who will be reclassified from Medicare skilled care to Medicaid nursing facility care, or who is currently funded from another source but anticipates applying for Medicaid within 90 days of

admission, and has been referred by a mental health center or civilly committed to the mental health system. Preadmission authorization is not transferable from one nursing facility to another.

(2) A nursing facility may perform a preadmission assessment on any other person who applies for nursing facility care.

(3) A nursing facility must obtain prior approval from the department before admitting an applicant. A request for prior approval may be in writing or by telephone and shall include:

(a) the name, age, and Medicaid eligibility of the applicant;

(b) the date of transfer or admission to the nursing facility;

(c) the date of the surgical procedure or traumatic incident, if any, that caused the need for care;

~~(d) the reason for acute care inpatient hospitalization or emergency placement, if any, and the care and services needed;~~

~~(e) the applicant's current functional and mental status;~~

~~(f) the established diagnoses;~~

~~(g) the medications and treatments currently ordered for the applicant;~~

~~(h) the projected level of care placement and an evaluation of alternative care resources and support services previously used, currently in use, and available through the community and family;~~

~~(i) the name of the individual requesting the prior approval;~~

~~(j) the Level I screening, except the screening is not required for admission to an intermediate care facility for the mentally retarded; and~~

~~(k) the Level II determination, if required by the department.~~

~~(4) If the department gives prior approval, the nursing facility shall submit to the department within five working days a preadmission transmittal for the applicant, and shall begin preparing the complete contact for the applicant. The complete contact is a written application containing all the elements of a request for prior approval plus:~~

~~(a) the preadmission continued stay transmittal;~~

~~(b) a signed release of information;~~

~~(c) a history and physical;~~

~~(d) the physician's orders;~~

~~(e) a nursing assessment;~~

~~(f) a social evaluation;~~

~~(g) a discharge plan;~~

~~(h) a resident assessment instrument completed no later than 14 calendar days after the resident is admitted to a nursing facility; and~~

~~(i) the completed comprehensive plan of care that includes measurable objectives and timetables to treat medical and psychosocial needs that are identified in a comprehensive assessment of significant impairments in the resident's functional capacity and his capabilities to perform daily life functions.~~

~~(5) When a Medicaid resident is admitted to a hospital, the department may not require preadmission authorization when the Medicaid resident returns to the original nursing facility not later than three consecutive days after the date of discharge from the nursing facility. If the readmission occurs four or more days after the date of discharge from the nursing facility, the nursing facility shall complete the preadmission authorization process again. However, if a Medicaid resident returns to a nursing facility for the mentally retarded within the three day period and may require skilled care or services, then the nursing facility shall immediately request prior approval from the department.~~

~~(6) The department shall reimburse a nursing facility for the five days allowed in Subsection R414-501-3(6)(c) if the department, without full assessment, gives prior approval for a resident who is an immediate placement.~~

~~(a) An immediate placement shall meet one of the following criteria:~~

~~(i) The resident exhausted acute care benefits or was discharged by a hospital;~~

~~(ii) A Medicare fiscal intermediary changed the resident's level of care, or the Medicare benefit days terminated and there is a need for continuing services reimbursed under Medicaid;~~

~~(iii) Protective services in the Department of Human Services placed the resident for care;~~

~~(iv) A tragedy, such as fire or flood, has occurred in the home, and the resident is injured, or an accident leaves a dependent person in imminent danger and requires immediate institutionalization;~~

~~(v) A family member who has been providing care to the resident dies or suddenly becomes ill;~~

~~(vi) A nursing facility terminated services, either through an adverse certification action or closure of the facility, and the resident must be transferred to meet his medical or habilitation needs; or~~

~~(vii) In the previous placement, the resident presented a clear danger to himself, others, or property.~~

~~(b) The department shall deny an immediate placement unless the Level I screening is completed and the department determines a Level II evaluation is not required, or if the Level II evaluation is required, then the Level II evaluation is completed and the department determines the applicant qualifies for placement in a nursing facility and Medicaid reimbursement. The three exceptions to this requirement are when the applicant is a provisional placement for less than seven days, the applicant has previously been screened and the determinations will be reviewed on his annual resident review, or when the placement is after an acute hospital stay and the physician certifies that the placement will be for less than 30 days.~~

~~(c) Prior approval for an immediate placement shall be effective for no more than five working days. During that period the nursing facility shall submit a preadmission transmittal, and shall begin preparing the complete contact for the applicant. If the nursing facility fails to timely submit the preadmission transmittal, the department may not make any payments until the department receives the preadmission transmittal and the nursing facility again complies with all preadmission requirements.~~

~~(7) If a nursing facility accepts a resident who elects not to apply for Medicaid coverage, and the nursing facility can prove that it gave the resident or his legal representative written notice of Medicaid eligibility and preadmission requirements, then the resident or legal representative shall be solely responsible for payment for the services rendered. However, if a nursing facility cannot prove it gave the notice to a resident or his legal representative, then the nursing facility shall be solely responsible for payment for the services rendered during the time when the resident was eligible for Medicaid coverage.~~

~~(8) The department shall refer medically ineligible applicants to appropriate health-related agencies when the preadmission assessment identifies such a need.~~

~~(9) The department shall deny payment to a nursing facility for services provided before the earliest of (a) the date of the verbal prior approval, (b) the date postmarked on the envelope containing the written application, or (c) the date the department receives the written application.~~

R414-501-4. Continued Stay Review.

(1) The department shall conduct a continued stay review to determine the need for continued stay in a nursing facility and to determine whether the resident has shown sufficient improvement to implement discharge planning and to refer the resident to one or more representatives for follow-up contact with the resident. Within 90 days after the department authorizes Medicaid reimbursement for a Medicaid resident, the department shall commence the continued stay review. This review must be completed no later than the last day of the calendar month in which it is due.

(2) If a question regarding placement or level of care for a Medicaid resident arises, the department may request additional information from the nursing facility. If the question remains unresolved, a department health care professional may perform a supplemental on-site review. The department or the nursing facility can also initiate an interim review because of a change in the Medicaid resident's condition or medical needs.

(3) A nursing facility shall make appropriate personnel and information reasonably accessible so the department can conduct the continued stay review.

(4) A nursing facility shall inform the department by telephone or in writing when the needs of a Medicaid resident change to possibly require discharge, a different level of care, or a change from the findings in the Level I screening or Level II evaluation. A nursing facility shall also inform the department of newly acquired facts relating to the resident's diagnosis, medications, treatments, care or service needs, or plan of care that may not have been known when the department determined medical need for admission or continued stay.

(5) The department shall deny payment to a nursing facility for services provided to a Medicaid resident who, against medical advice, leaves a nursing facility for more than two consecutive days, or who fails to return within two consecutive days after an authorized leave of absence. A nursing facility shall report all such instances to the department. The resident shall complete all preadmission requirements before the department may approve payment for further nursing facility services.

R414-501-5. General Provisions.

(1) The department is solely responsible for approving or denying a preadmission or continued stay authorization for payment for nursing facility services provided to a Medicaid resident. The department is ultimately responsible for determining the level of care for a Medicaid resident in a nursing facility. If a nursing facility complies with all preadmission and continued stay requirements for a Medicaid resident then the department shall provide coverage consistent with the state plan.

(2) If a nursing facility fails to comply with all preadmission or continued stay requirements, the department shall deny payment to the nursing facility for services provided to the applicant. The nursing facility is liable for all expenses incurred for services provided to the applicant on or after the date the applicant applied for Medicaid. The nursing facility may not bill the applicant or his legal representative for services not reimbursed by the department due to the nursing facility's failure to follow preadmission or continued stay rules.

(3) If the department denies a claim, then the department shall comply with 42 CFR 431.200 through 431.246, and also send

written notice to the nursing facility administrator, the attending physician, and, if possible, the next-of-kin or legal representative of the applicant. If the department denies a claim, then the nursing facility can resubmit additional documentation not later than 60 calendar days after the date the department receives the initial preadmission or continued stay transmittal. If the nursing facility fails to submit additional documentation that corrects the claim deficiencies within the 60 calendar day period, then the denial becomes final and the nursing facility waives all rights to Medicaid reimbursement from the time of admission until the department approves a subsequent request for authorization submitted by the nursing facility.

(4) The department adopts the standards and procedures for conducting a fair hearing set forth in 42 USC 1396a(a)(3) and 42 CFR 431.200 through 431.246, which are incorporated by reference. Those laws are implemented in Title 63G, Chapter 4 and in R410-14.

R414-501-6. Grace Days.

The department grants to each nursing facility 30 grace days in each fiscal year (July 1 to June 30). A nursing facility may use these grace days if an otherwise eligible recipient is admitted to the nursing facility or returns to the nursing facility after a hospital admission and the nursing facility fails to comply with preadmission or continued stay rules and is thus denied payment by the department. The nursing facility may use these grace days for one recipient or many recipients. To use these grace days the nursing facility shall contact the department in order to change the payment document in the computer system. The department shall keep a record of the grace days used by each nursing facility and shall provide this information to a nursing facility upon request.

R414-501-7. Safeguarding Information of Applicants and Residents.

(1) The department adopts the standards and procedures for safeguarding information of applicants and recipients set forth in 42 USC 1396a(a)(7) and 42 CFR 431.300 through 431.307, which are incorporated by reference.

(2) Standards for safeguarding a resident's private records are set forth in Section 63-2-302.

R414-501-8. Free Choice of Providers.

Subject to certain restrictions outlined in 42 CFR 431.51, 42 USC 1396a(a)(23) requires that recipients have the freedom to choose a provider. A recipient who believes his freedom to choose a provider has been denied or impaired may request a hearing from the department, as outlined in 42 CFR 431.200 through 431.221.

R414-501-9. Alternative Services Evaluation and Referral.

While reviewing a preadmission assessment for admission to a nursing care facility, other than an ICF/MR, the Department may evaluate the potential for the applicant to receive alternative Medicaid services in a home or community-based setting that are appropriate for the needs of the individual identified in the preadmission submittals. If, in the judgement of the reviewer, there is a potential for alternative Medicaid services, the Department shall refer the name of the applicant to one or more designated Medicaid home and community services program representatives for follow-up contact with the applicant.]

R414-501. Preadmission Authorization, Retroactive Authorization, and Continued Stay Review.

R414-501-1. Introduction and Authority.

This rule implements 42 USC 1396r(b)(3), (e)(5), and (f)(6)(B), and 42 CFR 456.1 through 456.23 and 456.350 through 456.380, by requiring the evaluation of each resident's need for admission and continued stay in a nursing facility. 42 USC 1396r, requirements for nursing facilities, and 42 CFR 483, requirements for states and long term care facilities, are adopted and incorporated by reference.

R414-501-2. Definitions.

In addition to the definitions in Section R414-1-1, the following definitions apply to Rules R414-501 through R414-503:

(1) "Activities of daily living" are defined in 42 CFR 483.25(a)(1), and further includes adaptation to the use of assistive devices and prostheses intended to provide the greatest degree of independent functioning.

(2) "Categorical determination" means a determination made pursuant to 42 CFR 483.130 and ATTACHMENT 4.39-A of the State Plan.

(3) "Code of Federal Regulations (CFR)" means the most current edition unless otherwise noted.

(4) "Continued stay review" means a periodic, supplemental, or interim review of a resident performed by a Department health care professional either by telephone or on-site review.

(5) "Discharge planning" means planning that ensures that the resident has an individualized planned program of post-discharge continuing care that:

(a) states the medical, functional, behavioral and social levels necessary for the resident to be discharged to a less restrictive setting;

(b) includes the steps needed to move the resident to a less restrictive setting;

(c) establishes the feasibility of the resident's achieving the levels necessary for discharge; and

(d) states the anticipated time frame for that achievement.

(6) "Health care professional" means a duly licensed or certified physician, physician assistant, nurse practitioner, physical therapist, speech therapist, occupational therapist, registered professional nurse, licensed practical nurse, social worker, or qualified mental retardation professional.

(7) "Medicaid resident" means a resident who is a Medicaid recipient.

(8) "Medicaid admission date" means the date the nursing facility requests Medicaid reimbursement to begin.

(9) "Mental retardation" is defined in 42 CFR 483.102(b)(3) and includes "persons with related conditions" as defined in 42 CFR 435.1009.

(10) "Minimum Data Set (MDS)" means the standardized, primary screening and assessment tool of health status that forms the foundation of the comprehensive assessment for all residents in a Medicare or Medicaid certified long-term care facility.

(11) "Nursing facility" is defined in 42 USC 1396r(a), and also includes an intermediate care facility for people with mental retardation as defined in 42 USC 1396d(d).

(12) "Nursing facility applicant" is an individual for whom the nursing facility is seeking Medicaid payment.

(13) "Preadmission Screening and Resident Review (PASRR) Level I Screening" means the preadmission identification screening described in Section R414-503-3.

(14) "Preadmission Screening and Resident Review (PASRR) Level II Evaluation" means the preadmission evaluation and resident review for serious mental illness or mental retardation described in Section R414-503-4.

(15) "Physician Certification" is a written statement from the Medicaid resident's physician that certifies the individual requires nursing facility services.

(16) "Resident" means a person residing in a Medicaid-certified nursing facility.

(17) "Serious mental illness" is defined by the State Mental Health Authority.

(18) "Significant change" means a major change in the resident's physical, mental, or psychosocial status that is not self limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan.

(19) "Skilled care" means those services defined in 42 CFR 409.32.

(20) "Specialized rehabilitative services" means those services provided pursuant to 42 CFR 483.45 and Section R432-150-23.

(21) "Specialized services" means those services provided pursuant to 42 CFR 483.120 and ATTACHMENT 4.39 of the State Plan.

(22) "United States Code (USC)" means the most current edition unless otherwise noted.

(23) "Working days" means all work days as defined by the Utah Department of Human Resource Management.

R414-501-3. Preadmission Authorization.

(1) A nursing facility will perform a preadmission assessment when admitting a nursing facility applicant. Preadmission authorization is not transferable from one nursing facility to another.

(2) A nursing facility must obtain prior approval from the Department before admitting a nursing facility applicant. A request for prior approval may be in writing or by telephone and will include:

(a) the name, age, and Medicaid eligibility of the nursing facility applicant;

(b) the date of transfer or admission to the nursing facility;

(c) the reason for acute care inpatient hospitalization or emergency placement, if any;

(d) a description of the care and services needed;

(e) the nursing facility applicant's current functional and mental status;

(f) the established diagnoses;

(g) the medications and treatments currently ordered for the nursing facility applicant;

(h) a description of the nursing facility applicant's discharge potential;

(i) the name of the hospital discharge planner or nursing facility employee who is requesting the prior approval;

(j) the Preadmission Screening and Resident Review (PASRR) Level I screening, except the screening is not required for

admission to an intermediate care facility for people with mental retardation; and

(k) the Preadmission Screening and Resident Review (PASRR) Level II determination, as required by 42 CFR 483.112.

(4) If the Department gives a telephone prior approval, the nursing facility will submit to the Department within five working days a preadmission transmittal for the nursing facility applicant, and will begin preparing the complete contact for the nursing facility applicant. The complete contact is a written application containing all the elements of a request for prior authorization plus:

(a) the preadmission continued stay transmittal;

(b) a history and physical;

(c) the signed and dated physician's orders, including physician certification; and

(d) an MDS assessment completed no later than 14 calendar days after the resident is admitted to a nursing facility.

(5) The requirements in Subsection R414-501-3 do not apply in cases in which a facility is seeking Retroactive Authorization described in Subsection R414-501-5.

R414-501-4. Immediate Placement Authorization.

(1) The Department will reimburse a nursing facility for five days if the Department gives telephone prior approval for a resident who is an immediate placement.

(a) An immediate placement will meet one of the following criteria:

(i) The resident exhausted acute care benefits or was discharged by a hospital;

(ii) A Medicare fiscal intermediary changed the resident's level of care, or the Medicare benefit days terminated and there is a need for continuing services reimbursed under Medicaid;

(iii) Protective services in the Department of Human Services placed the resident for care;

(iv) A tragedy, such as fire or flood, has occurred in the home, and the resident is injured, or an accident leaves a dependent person in imminent danger and requires immediate institutionalization;

(v) A family member who has been providing care to the resident dies or suddenly becomes ill;

(vi) A nursing facility terminated services, either through an adverse certification action or closure of the facility, and the resident must be transferred to meet his medical or habilitation needs;

or

(vii) A disaster or other emergency as defined by the Department has occurred.

(b) The Department will deny an immediate placement unless the PASRR Level I screening is completed and the Department determines a PASRR Level II evaluation is not required, or if the PASRR Level II evaluation is required, then the PASRR Level II evaluation is completed and the department determines the nursing facility applicant qualifies for placement in a nursing facility. The two exceptions to this requirement are when the nursing facility applicant is a provisional placement for less than seven days or when the placement is after an acute hospital admission and the physician certifies in writing that the placement will be for less than 30 days.

(c) Telephone prior approval for an immediate placement will be effective for no more than five working days. During that period the nursing facility will submit a preadmission transmittal, and will begin preparing the complete contact for the nursing facility applicant. If the nursing facility fails to submit the preadmission transmittal in a timely manner, the Department will not make any payments until the Department receives the preadmission transmittal and the nursing facility complies with all preadmission requirements.

R414-501-5. Retroactive Authorization.

A nursing facility may complete a written request for Retroactive Authorization. If approved, the authorization period will begin a maximum of 90 days prior to the date the authorization request is submitted to the Department. The request for Retroactive Authorization will include documentation that will demonstrate the clinical need for nursing facility care at the time of the requested Medicaid admission date. The documentation must also demonstrate the clinical need for nursing facility care as of the current date. This documentation will allow the Department's medical professionals to determine the clinical need for nursing facility care during both the retroactive period and the current period. Documentation will include:

(a) the name of the nursing facility employee who is requesting the authorization;

(b) the Retroactive Authorization request submission date;

(c) the requested Medicaid admission date;

(d) a description of why Retroactive Authorization is being requested;

(e) the name, age, and Medicaid identification number of the nursing facility applicant;

(f) the PASRR Level I screening; except the screening is not required for admission to an intermediate care facility for people with mental retardation;

(g) the PASRR Level II determination as required by 42 CFR 483.112;

(h) a history and physical;

(i) signed and dated physician's orders, including the physician certification;

(j) MDS assessment that covers the time period for which Medicaid reimbursement is being requested; and

(k) a copy of a Medicare denial letter, a Medicaid eligibility letter, or both, as applicable.

R414-501-6. Readmission After Hospitalization.

When a Medicaid resident is admitted to a hospital, the Department will not require Preadmission Authorization when the Medicaid resident returns to the original nursing facility not later than three consecutive days after the date of discharge from the nursing facility. If the readmission occurs four or more days after the date of discharge from the nursing facility, the nursing facility will complete the Preadmission Authorization process again including revising the PASRR Level I screening to evaluate the need for a new PASRR Level II evaluation.

R414-501-7. Continued Stay Review.

(1) The Department will conduct a continued stay review to determine the need for continued stay in a nursing facility and to

determine whether the resident has shown sufficient improvement to implement discharge planning.

(2) If a question regarding placement or the ongoing need for nursing facility services for a Medicaid resident arises, the Department may request additional information from the nursing facility. If the question remains unresolved, a Department health care professional may perform a supplemental on-site review. The Department or the nursing facility can also initiate an interim review because of a change in the Medicaid resident's condition or medical needs.

(3) A nursing facility will make appropriate personnel and information reasonably accessible so the Department can conduct the continued stay review.

(4) A nursing facility will inform the Department by telephone or in writing when the needs of a Medicaid resident change to possibly require discharge or a change from the findings in the PASRR Level I screening or PASRR Level II evaluation. A nursing facility will inform the Department of newly acquired facts relating to the resident's diagnosis, medications, treatments, care or service needs, or plan of care that may not have been known when the Department determined medical need for admission or continued stay. With any significant change, the nursing facility is responsible to revise the PASRR Level I screening to evaluate the need for a new PASRR Level II evaluation.

(5) The Department will deny payment to a nursing facility for services provided to a Medicaid resident who, against medical advice, leaves a nursing facility for more than two consecutive days, or who fails to return within two consecutive days after an authorized leave of absence. A nursing facility will report all such instances to the Department. The resident will complete all preadmission requirements before the Department may approve payment for further nursing facility services.

R414-501-8. Payment Responsibility.

(1) If a nursing facility accepts a resident who elects not to apply for Medicaid coverage, and the nursing facility can prove that it gave the resident or his legal representative written notice of Medicaid eligibility and preadmission requirements, then the resident or legal representative will be solely responsible for payment for the services rendered. However, if a nursing facility cannot prove it gave the notice to a resident or his legal representative, then the nursing facility will be solely responsible for payment for the services rendered during the time when the resident was eligible for Medicaid coverage.

(2) For Preadmission Authorization requests described in Section R414-501-3, the Department will deny payment to a nursing facility for services provided:

(a) before the date of the verbal prior approval or the date postmarked on the envelope containing the written application, or the date the Department receives the written application (whichever is earliest);

(b) if the facility fails to submit a complete application by the 60th day from the date the Department receives the Preadmission Authorization request; or

(c) if the facility fails to comply with PASRR requirements.

(3) For Retroactive Authorization described in Section R414-501-5, the Department will deny payment to a nursing facility for services provided:

(a) greater than 90 days prior to the request for Retroactive Authorization;

(b) if the facility fails to submit a complete application by the 60th day from the date the Department receives the Retroactive Authorization request; or

(c) the facility fails to comply with PASRR requirements.

R414-501-9. General Provisions.

(1) The Department is solely responsible for approving or denying a Preadmission, Retroactive or continued stay authorization for payment for nursing facility services provided to a Medicaid resident. The Department is ultimately responsible for determining if a Medicaid resident has a clinical need for nursing facility services. If the Department determines a nursing facility applicant or Medicaid resident does not have a clinical need for nursing facility services, a written notice of agency action, in accordance with 42 CFR 431.200 through 431.246, 42 CFR 456.437 and 456.438 will be sent. If a nursing facility complies with all Preadmission Authorization, Retroactive Authorization and continued stay requirements for a Medicaid resident then the Department will provide coverage consistent with the State Plan.

(2) If a nursing facility fails to comply with all Preadmission Authorization, Retroactive Authorization or continued stay requirements, the Department will deny payment to the nursing facility for services provided to the nursing facility applicant. The nursing facility is liable for all expenses incurred for services provided to the nursing facility applicant on or after the date the nursing facility applicant applied for Medicaid. The nursing facility will not bill the nursing facility applicant or his legal representative for services not reimbursed by the Department due to the nursing facility's failure to follow Preadmission Authorization, Retroactive Authorization or continued stay rules.

(3) If the application is incomplete it will be denied. The Department will comply with notice and hearing requirements as defined in 42 CFR 431.200 through 431.246, and also send written notice to the nursing facility administrator, the attending physician, and, if possible, the next-of-kin or legal representative of the nursing facility applicant. If the Department denies a claim, the nursing facility can resubmit additional documentation not later than 60 calendar days after the date the Department receives the initial Preadmission or Retroactive Authorization request or continued stay transmittal. If the nursing facility fails to submit additional documentation that corrects the claim deficiencies within the 60 calendar day period, then the denial becomes final and the nursing facility waives all rights to Medicaid reimbursement from the time of admission until the Department approves a subsequent request for authorization submitted by the nursing facility.

(4) The Department adopts the standards and procedures for conducting a fair hearing set forth in 42 USC 1396a(a)(3) and 42 CFR 431.200 through 431.246, which are incorporated by reference. Those laws are implemented in Title 63G, Chapter 4 and in Rule R410-14.

R414-501-10. Safeguarding Information of Nursing Facility Applicants and Residents.

(1) The Department adopts the standards and procedures for safeguarding information of nursing facility applicants and recipients set forth in 42 USC 1396a(a)(7) and 42 CFR 431.300 through 431.307, which are incorporated by reference.

(2) Standards for safeguarding a resident's private records are set forth in Section 63-2-302.

R414-501-11. Free Choice of Providers.

Subject to certain restrictions outlined in 42 CFR 431.51, 42 USC 1396a(a)(23) requires that recipients have the freedom to choose a provider. A recipient who believes his freedom to choose a provider has been denied or impaired may request a hearing from the department, as outlined in 42 CFR 431.200 through 431.221.

R414-501-12. Alternative Services Evaluation and Referral.

While reviewing a preadmission assessment for admission to a nursing care facility, other than an ICF/MR, the Department may evaluate the potential for the nursing facility applicant to receive alternative Medicaid services in a home or community-based setting that are appropriate for the needs of the individual identified in the preadmission submittals. If there appears to be a potential for alternative Medicaid services, with the permission of the nursing facility applicant, the nursing facility will refer the name of the nursing facility applicant to one or more designated Medicaid home and community-based services program representatives for follow-up contact with the nursing facility applicant.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 18, 2001~~ 2009

Notice of Continuation: August 27, 2004

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 63G-3-304(1)(a)

Insurance, Administration

R590-196

Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32879

FILED: 8/12/09 5:29 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to allow bail bondsmen to pass through court or jail processing fees to their clients.

SUMMARY OF THE RULE OR CHANGE: The changes to the rule include spelling corrections, change in outlining, and the addition of a pass through fee that allows bondsmen to pass along jail or court processing fees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-35-104

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The changes to this rule will not change the revenue flow or expenses of the department or state government. It will create a little additional work in the way of form filings made to the department if a bail bond agency adopts the pass through fee allowed in the rule. This however will be minimal and just for a short period of time.

♦ **LOCAL GOVERNMENTS:** The changes to this rule will have no fiscal impact on local governments since it deals solely with the relationship between the department and their licensees, bail bond surety companies, agencies, and agents.

♦ **SMALL BUSINESSES:** This rule will allow bail bond agencies and agents to pass along a processing fee charged to them by the court or jail. Currently they are unable to pass this cost along to their customers.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to this rule will have no effect on large businesses. If an agency decides to pass along the court or jail processing fee it will affect the consumer. The processing fees have been around \$25. Only a few courts and jails are charging the fee so far.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Defendants or co-signers to a bail bond may be required to pay around \$25 for jail or court processing fees if an agent decides to pass the charge on to their clients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will allow bail bondsmen to pass along to their clients court and jail processing fees. These fees are around \$25 and not all jails or courts are charging them yet.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form.

R590-196-4. Fee Standards.

- (1) Initial bail bond fees.
 - (a) Bail bond premium:
 - (i) minimum fee: none;
 - (ii) maximum fee: not to exceed 20% of bond amount.
 - (b) Document preparation fee may not exceed \$20 per set of forms pertaining to one bail bond.
 - (c) Credit card fee may not exceed 5% of the amount charged to the credit card.
- (2) ~~Other~~ Additional fees.
 - (a) These fees are limited to actual and reasonable expenses incurred by the bail bond surety because:
 - (i) the defendant fails to appear before the court at any designated dates and times;
 - (ii) the defendant fails to comply with the court order; or
 - (iii) the defendant or the co-signer fails to comply with the terms of the bail bond agreement and any promissory notes pertaining to that agreement.
 - (b) Reasonable expense fee for mileage is the Internal Revenue Service standard for business mileage.
 - (c) Apprehension expenses such as meals, lodging, commercial travel, communications, whether or not the defendant is apprehended, are limited to actual expenses incurred and must be reasonable, i.e., meals at mid-range restaurants, lodging at mid-range hotels, commercial travel in coach class, etc.
 - (d) Reasonable collateral expense fees:
 - (i) actual expenses to obtain collateral; and
 - (ii) storage expenses if in a secured storage area, limited to actual expenses.
 - (e) A late payment fee of \$20 or 5% of the delinquent periodic payment ~~[which ever]~~ whichever is less.
 - (f) If a fee is charged by the court or the jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.

R590-196-6. Disclosure Form.

The bail bond surety and its agents will use the following disclosure form or a form that contains similar language.

TABLE

XYZ Bail Bonds Disclosure Form
 1234 South 1234 East, Salt Lake City, UT 84444:
 801-123-4567 fax: 801-098-7654

Defendant.....	Co-Signer.....	
Court.....	Charge.....	
Bond amount \$.....	Bond number.....	
Initial Fees, non-refundable.		
...bond premium, maximum: no more than 20%; minimum: none.		\$.....
...document preparation, not to exceed \$20 per set of bond forms.		\$.....
...credit card fee, not to exceed 5% of amount charged to credit card		\$.....
	total initial fees	\$.....

Additional Fees.

- (1) Limited to actual and reasonable expenses required because the defendant fails to appear before the court at any designated times, or fails to comply with the court order, or fails to comply with the terms of the bail bond agreement or any promissory notes pertaining to that agreement. The following are some reasonable expense fees:
 - ~~[(1)]~~ (i) reasonable expense fee for mileage is IRS mileage reimbursement standard for business miles;
 - ~~[(2)]~~ (ii) reasonable apprehension expense fees include meals at mid-range restaurants, lodging at mid-range hotels, transportation at no more than coach fares; and
 - ~~[(3)]~~ (iii) reasonable collateral expense fees: actual expenses to obtain collateral and, actual storage expenses, if collateral is in a secured storage area.
- ~~[(4)]~~ (2) A late payment fee of \$20 or 5% of the delinquent periodic payment ~~[which ever]~~ whichever is less.
- (3) If a fee is charged by the court or the jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.

Grounds for revocation of bond.

Should the defendant violate any of the following, the defendant shall be subject to immediate bond revocation and the defendant, or the co-signer, or both, shall be subject to all the costs incurred to return the defendant to the court.

Grounds for revocation include the following:

- (a) the defendant or co-signer providing materially false information on bail bond application;
- (b) the court's increasing the amount of bail beyond sound underwriting criteria employed by the bail bond agent or bail bond surety;
- (c) a material and detrimental change in the collateral posted by the defendant or one acting on defendant's behalf;
- (d) the defendant changes their address or telephone number or employer without giving reasonable notice to the bail bond agent or bail bond surety;
- (e) the defendant is arrested for another crime, other than a minor traffic violation, while on bail;
- (f) the defendant is back in jail in any jurisdiction and revocations can be served prior to the defendant being released;
- (g) failure by the defendant to appear in court at any appointed times;
- (h) finding of guilt against the defendant by a court of competent jurisdiction;
 - (i) a request by the co-signer based on reasons (a) through (h) above. Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g) and (i) pertain to co-signers, if any.

Collateral.

The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated:

.....

The following has been given as collateral to guarantee payment of bond fees:

.....

In the event judgment is entered against the surety or the bonding fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bond fees. Should proceeds from the sale of the appropriate collateral be insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. Should proceeds from the sale exceed the outstanding balance, the difference will be returned to the

depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.

By signing below I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above in additional fees. If requested by the co-signer to revoke the bond without probable cause, the co-signer will be responsible to reimburse the defendant his bond fees.

Date.....Defendant.....
Date.....Co-signer.....
Date.....Depositor.....
I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.
Date.....Bail Bond Agent.....

KEY: insurance
Date of Enactment or Last Substantive Amendment: [February 10, 2005]2009
Notice of Continuation: January 7, 2005
Authorizing, and Implemented or Interpreted Law: 31A-35-104

Insurance, Administration
R590-225
Submission of Property and Casualty Rate and Form Filings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32878
FILED: 8/12/09 4:57 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for these changes is to update the rule to comply with rate and form filing procedures and to clarify language.

SUMMARY OF THE RULE OR CHANGE: The purpose for these changes is to update the rule to comply with rate and form filing procedures: update incorporated documents; eliminate the reference to Sircon; change the time required to

make filing corrections from 30 to 15 days; and require that the intent of the filing and purpose of each document be included with each filing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-19a-203 and Section 31A-2-201 and Section 31A-2-201.1 and Section 31A-2-202

MATERIALS INCORPORATED BY REFERENCE:
Updates NAIC Uniform Property and Casualty Coding Matrix, published by National Association of Insurance Commissioners, January 1, 2009;
Updates NAIC Property and Casualty Transmittal Document (Instructions), published by National Association of Insurance Commissioners, January 1, 2009;
Updates NAIC Uniform Property and Casualty Transmittal Document, published by National Association of Insurance Commissioners, January 1, 2009

ANTICIPATED COST OR SAVINGS TO:
◆ THE STATE BUDGET: These changes will have no fiscal impact on the department. The changes will not increase the work load and no additional filings or fees will be required.
◆ LOCAL GOVERNMENTS: The changes to this rule will have no effect on local government since the rule deals with the relationship between the department and its licensees, in this case, property and casualty insurance companies.
◆ SMALL BUSINESSES: This rule affects property and casualty insurance companies, few, if any, would be considered small businesses. The changes to this rule update the procedures of the department and what is happening in the industry. At the request of the industry the language in the rule has been changed to clarify the filing requirements. The only fiscal impact may be the reduction in rejected filings, as a result of these clarifications, which would result in reduced filing fees paid by insurers.
◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule affects property and casualty insurance companies, most of which are considered large businesses. The changes to this rule update the procedures of the department and what is happening in the industry. At the request of the industry the language in the rule has been changed to clarify the filing requirements. The only fiscal impact may be the reduction in rejected filings, as a result of these clarifications, which would result in reduced filing fees paid by insurers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule affects property and casualty insurance companies, most of which are considered large businesses. The changes to this rule update the procedures of the department and what is happening in the industry. At the request of the industry the language in the rule has been changed to clarify the filing requirements. The only fiscal impact may be the reduction in rejected filings, as a result of these clarifications, which would result in reduced filing fees paid by insurers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have little, if any, fiscal impact on businesses in Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/15/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-225. Submission of Property and Casualty Rate and Form Filings.

R590-225-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following filing documents are hereby incorporated by reference and are available on the department's web site, <http://www.insurance.utah.gov>.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated ~~[March 1, 2007]~~ January 1, 2009;

(b) "NAIC Property and Casualty Transmittal Document (Instructions)", dated ~~[March 1, 2007]~~ January 1, 2009;

(c) "NAIC Uniform Property and Casualty Coding Matrix", dated ~~[March 1, 2007]~~ January 1, 2009;

(d) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated October 2003;

(e) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated October 2003.

R590-225-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, ~~[system]~~ or

~~[(b) filing submitted via the Internet by using the Sireon system or~~

~~(e)]~~ (b) filing submitted via an email system.

(3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(4) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(5) "Filer" means a person ~~[or entity]~~ who submits a filing.

(6) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(7) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(8) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(9) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(10) "Type of Insurance" means a specific line of property and casualty insurance including general liability, commercial property, workers compensation, automobile, homeowners, title, bail bond and service contracts.

(11) "Use And File" means a filing can be used, sold, or offered for sale if it is filed within a stated period of time after its initial use.

(12) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted, ~~[pursuant to this subsection 3,4 and 11.]~~

R590-225-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee[s] and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing ~~[Filings]~~ not in compliance with Utah laws and rules ~~[are]~~ is subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing;

(c) will not be reopened for purposes of resubmission.

(5) A prior filing will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

- (i) when submitted;
- (ii) as a result of a complaint;
- (iii) during a regulatory examination or investigation; or
- (iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within ~~[30]~~15 days of the date the original filing was submitted to the department. The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than ~~[30]~~15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.

(8) If responding to a Response to Filing Objection Letter or an Order to Prohibit Use, refer to section R590-225-12 for instructions.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-225-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF ~~[or Sireon]~~ to submit a filing.

(b) EXCEPTION: bail bond agencies and service contract providers may choose to use email instead of SERFF to submit a filing.

(2) A filing must be submitted by market type and type of insurance, not by annual statement line number.

(3) A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description.

(4) A filer may submit a filing for more than one insurer if all applicable companies are listed.

(5) SERFF Filing.

(a) Filing Description. Do not submit a cover letter. On the ~~[general information]~~General Information tab, complete the Filing Description Section with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including[-]:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(b) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the ~~[supplementary]~~Supporting ~~[d]~~Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(c) Items being submitted for filing.

(i) ~~[Any]~~All forms must be attached to the ~~[form schedule]~~Form Schedule tab.

(ii) ~~[Any]~~All rates and supplementary rating information must be attached to the ~~[rate/rule schedule]~~Rate/Rule Schedule tab.

(d) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

~~[(6) Sireon Filing.~~

~~(a) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in R590-225-3(2), must be properly completed.~~

~~(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:~~

~~(A) "NAIC Coding Matrix;"~~

~~(B) "NAIC Instruction Sheet," and~~

~~(C) "Utah Property and Casualty Content Standards."~~

~~(ii) Do not submit the documents described in (A),(B), and (C) with the filing.~~

~~(b) Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the filing description with the following information, presented in the order shown below:~~

~~(i) Certification:~~

~~(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.~~

~~(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".~~

~~(C) A filing will be rejected if the certification is false, missing, or incomplete.~~

~~(D) A certification that is false may subject the licensee to administrative action.~~

~~(ii) Provide a description of the filing.~~
~~(iii) Indicate if the filing:~~
~~(A) is new;~~
~~(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;~~
~~(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or~~
~~(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.~~
~~(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.~~
~~(e) Letter of Authorization.~~
~~(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.~~
~~(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.~~
~~(d) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and supplementary information.~~
~~(e) Items being submitted for filing. All items submitted for filing must be attached to the product forms tab.~~
~~(7)](6) A complete EMAIL filing consists of the following when submitted by a bail bond agent or a service contract provider:~~
 (a) The title of the EMAIL must display the company name only.
 (b) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in section R590-225-3(2), must be properly completed.
 (i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:
 (A) "NAIC Coding Matrix;"
 (B) "NAIC Instruction Sheet;" and
 (C) "Utah Property and Casualty Content Standards."
 (ii) Do not submit the documents described in (A), (B), and (C) with the filing.
 (c) Filing Description. Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the Filing Description with the following information, presented in the order shown below.
 (i) Certification.
 (A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
 (B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".
 (C) A filing will be rejected if the certification is false, missing, or incomplete.
 (D) A certification that is false may subject the licensee to administrative action.
 (ii) Provide a description of the filing including[-]:
~~(A) the intent of the filing; and~~

(B) the purpose of each document within the filing.
 (iii) Indicate if the filing:
 (A) is new;
 (B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;
 (C) includes forms for informational purposes; if so, provide the Utah Filed Date; or
 (iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.
 (d) Letter of Authorization.
 (i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.
 (ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.
 (e) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and supplementary information.
 (f) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.
~~(8) A filing will be rejected if any of the information required is missing or incomplete.]~~

R590-225-11. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:
 (a) type of insurance;
 (b) date of filing; and
 (c) Submission method, SERFF, [SIRCON-]or email; and
 (d) tracking number
 (2) Status Checks.
~~[(a) A filer can request the status of its filing by telephone, or email 60 days after the date of submission.~~
~~(b) A complete filing is usually processed within 45 days of receipt. A response should be received within that time.](a) A complete filing is usually processed within 45 days of receipt.
(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.~~

R590-225-12. Responses.

(1) Response to a Filing Objection Letter. ~~[A response to a]When responding to a [filing objection]Filing Objection letter a filer must[-include]:~~
 (a) ~~[a cover letter]provide an explanation~~ identifying all~~[the]~~ changes made;
 (b) ~~[revised documents with all changes highlighted]include an underline and strikeout version for each revised document.[-and]~~
 (c) ~~[revised documents incorporating all changes without highlights]a final version of revised documents that incorporates all changes[-]; and~~
~~(d) for filings submitted in Serff, attach the documents in Subsections R590-225-12(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.~~
 (3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the [company]licensee chooses to make the requested changes addressed in the [original] Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-13. Penalties.

A person found ~~[after a hearing or other regulatory process]~~ to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule ~~[30]~~15 days from the effective date of this rule.

R590-225-15. Severability.

~~[If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.]~~ If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: property casualty insurance filing

Date of Enactment or Last Substantive Amendment: ~~[July 12, 2007]~~2009

Notice of Continuation: March 12, 2009

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202; 31A-19a-203

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32880

FILED: 8/12/09 11:08 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum Gas Board met on 06/19/2009, in a regularly scheduled Board meeting and

voted to amend Rule R710-6 by updating an incorporated reference, removing the examination time limit on certification examinations, correcting rule verbiage, and extending the time requirement for fire safety analysis submittals an additional year.

SUMMARY OF THE RULE OR CHANGE: A summary of the rule amendments are as follows: 1) in Subsection R710-6-1(1.2), the Board proposes to update an incorporated reference and use the 2009 edition of National Fire Protection Association, NFPA 54, National Fuel Gas Code and discontinue usage of the 2006 edition; 2) in Subsection R710-6-4(4.4.3), the Board proposes to delete the time limit of two hours to complete the certification examinations. The Board has found the newly rewritten examinations take longer than two hours to complete and the limiting time should not be in the rule; 3) in Subsection R710-6-8(8.6.9), the Board proposes to extend the time limit by one year for submittal of the Fire Safety Analysis to be completed by those with Liquefied Petroleum (LP) Gas containers having a capacity of more than 4,000 water gallons; and 4) in Section R710-6-8, the Board proposes to correct rule verbiage in several sections to make the rule more understandable.

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

MATERIALS INCORPORATED BY REFERENCES:

Updates *NFPA 54 - National Fuel Gas Code*, published by National Fire Protection Association, 08/12/2009

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is an aggregate anticipated cost of approximately \$368 to the state budget to enact these proposed rule amendments. This would be to purchase the needed copies of the 2009 NFPA 54 Standard, National Fuel Gas Code, for those that need the newly incorporated reference to enforce the requirements of this code.

♦ LOCAL GOVERNMENTS: There is no effect on local government because local government does not oversee the Liquefied Petroleum Gas Safety Act statewide.

♦ SMALL BUSINESSES: There would be an aggregate anticipated cost of approximately \$4,600 to small businesses to enact these rule changes if nearly every company purchased a 2009 NFPA 54 for approximately \$46 each.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The aggregate anticipated cost to persons other than small businesses, businesses, and local governmental entities would be to purchase the newly adopted 2009 edition of NFPA 54, National Fuel Gas Code at approximately \$46 per volume. A total aggregate anticipated number to be purchased is unknown from this group and cannot be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost of affected persons is the cost of the 2009 NFPA 54 National Fuel Gas Code at approximately \$46 per volume. If an affected person is to complete all accepted

procedures and requirements with regard to the installation of LP Gas fueled equipment, they would need a copy of the 2009 NFPA 54 standard.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only fiscal impact to this proposed rule amendment is the cost for the updated incorporated reference. The LP Gas industry has requested for an extended period of time to use the most up to date NFPA standards that allows the most recent code decisions to be implemented.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/01/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2009

AUTHORIZED BY: Ron Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-6. Liquefied Petroleum Gas Rules.

R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2008 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, [2006]2009 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2005 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's

Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The applicant is allowed to use the adopted statute, administrative rules, NFPA 54, and NFPA 58. Any other materials to include cellular telephones or related cellular equipment are prohibited in the examination room.

4.4.2 The initial examination may also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant if so warranted by the test administrator.

4.4.3 ~~[Each certification examination taken has a time limit of two hours to completion.]~~ Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

4.4.4 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.5 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

4.4.6 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.7 As required in Sections 4.2 and 4.3 of these rules, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.8 As required in Sections 4.2 and 4.3.6 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.9 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.10 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that are licensed journeyman plumbers as required in the Construction Trades Licensing Act Plumber Licensing Rules, R156-55c, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.7.5 As required in Section 4.7 of these rules, those applicants that have successfully completed the requirements in

Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant.

4.7.6 As required in Section 4.7 of these rules, those applicants that provide the Division with written verification of the completion of 40 hours of continuing training over the previous five-year period shall have the requirement for re-examination waived.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Section 5.2 of these rules.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or

any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete "20" from line three and replace it with "10".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall be stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels", and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and does not bear the required ASME construction stamp, the owner may submit to the Division a request for "Special Classification Permit". Specifications of the type of container, container history if known, material specifications and

calculations, and condition of the container shall be submitted to the Division by the owner. The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following sentence at the end of the section: ~~[(A)]~~ Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.~~[8]9~~.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: ~~[(M)L]~~ All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal~~[-]~~ and shall meet the following requirements:

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.~~[22-3-13]~~24.3.16 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.9 NFPA, Standard 58, Section 6.25.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

8.6.~~[8]~~10 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

KEY: liquefied petroleum gas

Date of Enactment or Last Substantive Amendment: ~~[June 8, 2009]~~**October 8, 2009**

Notice of Continuation: March 30, 2006

Authorizing, and Implemented or Interpreted Law: 53-7-305

Public Service Commission,
Administration
R746-312
Electrical Interconnection

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 32881

FILED: 8/13/09 11:06 AM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule implements standards for interconnection of electrical generating facilities to public utilities under the jurisdiction of the Public Service Commission. The rule specifies the application procedures, technical requirements, evaluations, inspections and maintenance requirements, fees and timelines which pertain to interconnection of facilities to public utilities.

SUMMARY OF THE RULE OR CHANGE: The rule gives the terms and conditions by which a person would apply for and make a connection of electricity generating resources with the electric distribution system of a public utility electrical corporation. The rule also gives the terms and conditions by which the public utility electrical corporation would respond to these interconnection applications and installations. The rule has application, with differing provisions, based upon the size of the interconnecting generating resources, viz., 25 kilowatts or less, 2 megawatts or less, and 20 megawatts or less.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-12-2 and Section 54-15-106 and Section 54-4-14 and Section 54-4-7

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None are anticipated relative to the day-to-day operations of a state agency. To the extent a state agency may desire to install an electrical generating facility

and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.

♦ **LOCAL GOVERNMENTS:** None are anticipated relative to the day-to-day operations of local governments. To the extent a local governmental entity may desire to install an electrical generating facility and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.

♦ **SMALL BUSINESSES:** None are anticipated relative to the day-to-day operations of small businesses. To the extent a local small business may desire to install an electrical generating facility and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None are anticipated relative to the day-to-day operations of other entities. To the extent a customer may desire to install an electrical generating facility and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: See Persons other than small businesses, etc. above. This rule generally mirrors the interconnection requirements set by the U.S. Federal Energy Regulatory Commission for utilities under its jurisdiction and which are generally followed by investor-owned utilities. Reporting requirements are minor and records required are similar to those which would be captured by a prudent public utility or may be required for compliance with a renewable energy portfolio standard imposed by state law. Specific portions of the rule may be waived for good cause. Required studies reflect those already necessary to ensure a safe, reliable interconnection. It is anticipated that compliance costs are similar to costs already incurred to do the same functions and activities

already done to interconnect the generating resources which are the subject of the proposed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Utah law encourages the development of alternative and independent electric generation resources. The proposed rule establishes greater uniformity in the process and the means through which electricity generating resources, not owned by a public utility, may be connected with a public utility's electricity distribution system. It follows existing practices of affected utilities, the requirements of federal regulatory interconnection terms, or processes and procedures reasonably expected for safe and efficient interconnection of the size of resources subject to the proposed rule. As it provides for greater consistency on the terms and conditions for interconnection, it is expected to reduce transactions costs associated with interconnecting these types of facilities and represents a reasonable balancing of the interests of those individuals who wish to interconnect their facilities and public utilities with whom interconnection is sought.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Sandy Mooy by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at smooy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/01/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2009

AUTHORIZED BY: Sandy Mooy, Legal Counsel

R746. Public Service Commission, Administration.

R746-312. Electrical Interconnection.

R746-312-1. Authority.

(1) This rule establishes procedures and standards for electrical interconnection of generating facilities to a public utility as provided for in Sections 54-3-2, 54-4-7, 54-4-14, 54-12-2, and 54-15-106.

R746-312-2. Definitions.

(1) "Adverse system impact" means the negative effects due to technical or operational limits on conductors or equipment being exceeded which may compromise the safety and reliability of the electric distribution system.

(2) "Affected system" means an electric system other than a public utility's electric distribution system which may be affected by the proposed interconnection.

(3) "Building code official" means the city or local official whose responsibility includes inspecting facilities for compliance with the city or local jurisdiction electrical code requirements.

(4) "Business day" means Monday through Friday, excluding Federal holidays.

(5) "Confidential information" means any confidential and/or proprietary information provided by one party to the other party that is clearly marked or otherwise designated "Confidential." For the purposes of this rule, all design, operating specifications, and metering data provided by the interconnection customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such. Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities, or necessary to be divulged in an action to enforce these procedures.

(6) "Electric distribution system" means that portion of an electric system which delivers electricity from transformation points on the transmission system to the point or points of connection at a customer's premises.

(7) "Equipment package" means a group of components connecting a generating facility generator with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric production source. An equipment package does not include equipment provided by the utility.

(8) "Fault current" means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. A fault current is several times larger in magnitude than the current that normally flows through a circuit.

(9) "Facilities study" means a study conducted to determine the additional or upgraded distribution system facilities necessary to interconnect a generating facility with a public utility, the cost of those facilities, and the time schedule required to interconnect the generating facility to the public utility's distribution system.

(10) "Feasibility study" means a preliminary evaluation of the system impact and the cost of interconnecting a generating facility to the public utility's electric distribution system.

(11) "Generating facility" means the interconnection customer's device for the production of electricity identified in the interconnection request, but shall not include the interconnection customer's interconnection facilities.

(12) "Generation capacity" means the nameplate capacity of the power generating device(s) of a generating facility. Generation capacity does not include the effects caused by inefficiencies of power conversion or plant parasitic loads.

(13) "Good utility practice" means a practice, method, policy, or action engaged in or accepted by a significant portion of the electric industry in a region during the relevant time period, which a reasonable utility official would expect, in light of the facts reasonably discernable at the time, to accomplish the desired result reliably, safely and expeditiously. Good utility practice is not

intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(14) "Governing Authority" means

(a) For a distribution electrical cooperative, its board of directors; and

(b) for each other electrical corporation, the Public Service Commission, otherwise referred to as the commission.

(15) "IEEE standards" means the standards published in the 2003 edition of the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, entitled "Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 12, 2003, and in the 2005 edition of the IEEE Standard 1547.1, entitled "IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 9, 2005.

(16) "Interconnection agreement" means a standard form agreement between an interconnection customer and a public utility, which governs the connection of a generating facility to the electric distribution system, as well as the ongoing operation of the generating facility after it is connected to the system.

(17) "Interconnection customer" means any entity, including a public utility, which proposes to interconnect its generating facility with the public utility's distribution system.

(18) "Interconnection request" means the interconnection customer's request to interconnect a new generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the public utility. The interconnection request includes all required processing fees or deposits required by the public utility.

(19) "Inverter" means a machine, device or system which changes direct-current power to alternating-current power.

(20) "Level 1 Interconnection Review" means an interconnection review process applicable to an inverter-based facility having a generation capacity of 25 kilowatts or less.

(21) "Level 2 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of 2 megawatts or less and which does not qualify for or fails to meet Level 1 interconnection review requirements.

(22) "Level 3 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of 20 megawatts or less and which does not qualify for or fails to meet Level 1 or Level 2 interconnection review requirements.

(23) "Net metering facility" means a facility eligible for net metering, or an eligible facility as defined in Subsection 54-15-102(4).

(24) "Party or parties" means the public utility and/or the interconnection customer.

(25) "Point of common coupling" means the point at which the interconnection between the public utility's system and the interconnection customer's equipment interface occurs. Typically, this is the customer side of the public utility's meter.

(26) "Public utility" has the meaning set forth in Subsection 54-2-1(16) and is limited to a public utility that provides electric service.

(27) "Queue position" means the order of a valid interconnection request, relative to all other pending valid interconnection requests, which is established based upon the date and time of receipt of a completed interconnection request, including application fees, by the public utility.

(28) "Spot network" means a type of electric distribution system that uses two or more inter-tied transformers protected by network protectors to supply an electrical network circuit. A spot network is generally used to supply power to a single customer or a small group of customers.

(29) "Standard form" or "standard form agreement" means a form or agreement which follows that adopted or approved by the Federal Energy Regulatory Commission in its small generator interconnection proceedings and modified to be consistent with these rules unless the governing authority has approved an alternative form or agreement.

(30) "System Impact study" means an engineering analysis of the probable impact of a generating facility on the safety and reliability of the public utility's electric distribution system.

(31) "Telemetry" means the remote communication from a generator facility to a point on the public utility's communication network where the data can be assimilated into the public utility's grid operations if desired.

(32) "Upgrades" means the required additions and modifications to a public utility's distribution system beyond the point of interconnection. Upgrades do not include interconnection facilities.

(33) "Written notice" means a required notice sent by the utility via electronic mail if the interconnection customer has provided an electronic mail address. If the interconnection customer has not provided an electronic mail address, or has requested in writing to be notified by United States mail, or if the utility elects to provide notice by United States mail, then written notices from the utility shall be sent via First Class United States mail. The utility shall be deemed to have fulfilled its duty to respond under this rule on the day it sends the interconnection customer notice via electronic mail or deposits such notice in First Class mail. The interconnection customer shall be responsible for informing the utility of any changes to its notification address.

R746-312-3. Purpose, Scope, Applicability and Exceptions.

(1) This rule establishes procedures for electrical interconnection of a generating facility to a public utility's distribution system with the following exceptions:

(a) All references to fees and charges in Section R746-313 do not apply to public utilities for which the Commission does not have ratemaking authority as identified in Subsection 54-7-12(6). Rates and charges will be determined by the public utility's governing authority in accordance with applicable law.

(b) Pursuant to Subsection 54-15-106(2), a public utility whose governing authority has, after appropriate notice and opportunity for public comment, adopted by rule additional reasonable safety requirements, power quality and interconnection requirements is exempt from the disconnect switch exemption in Subsection R746-312-4(2)(a)(i) provided the public utility files with the Commission the final rule and evidence of appropriate notice and opportunity for public comment.

(2) For good cause shown, the commission may waive or modify any provision of this electrical interconnection rule.

(3) A public utility and interconnection customer may mutually agree to reasonable extensions to the required times for notices and submissions of information set forth in this rule for the purpose of allowing efficient and complete review of an interconnection request. If a public utility unilaterally seeks waiver of the time lines set forth in this rule, the commission may consider the number of pending applications for interconnection review and the type of applications, including review level and facility size.

(4) A public utility shall provide to the interconnection customer information regarding options for complaint or dispute resolution during the interconnection request review process prior to or along with the results of the initial interconnection review.

(5) Complaints or disputes will be addressed as follows:

(a) residential interconnections will be addressed according to the provisions of Sections R746-200-4, R746-200-8 and R746-200-9.

(b) non-residential interconnections will be addressed according to the following procedure:

(i) In the event of a complaint or dispute, either party shall provide the other party with a written Notice of Dispute. Such notice shall describe in detail the nature of the dispute.

(ii) If the dispute has not been resolved within two business days after receipt of such notice, the dispute shall be served upon the other party and filed with the commission. A copy shall also be served upon the Division of Public Utilities.

(iii) An answer or other responsive pleading to the complaint shall be filed with the commission not more than ten business days after receipt of service of the complaint or dispute. Copies of the answer or responsive pleading shall be served on the complainant and the Division of Public Utilities.

(iv) A prehearing conference shall be held not later than 15 business days after the complaint is filed.

(v) The Commission shall commence a hearing on the complaint not later than 25 days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable. Parties shall be entitled to present evidence as provided by the commission's rules.

(vi) The Commission shall take final action on a complaint not more than 30 business days after the complaint is filed unless:

(A) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or

(B) the parties agree to an extension of final action by the commission.

R746-312-4. Installation, Operation, Maintenance, Testing and Modification of Generating and Interconnection Facilities.

(1) Except for generating facilities in operation or approved for operation prior to the effective date of this rule, an interconnection customer of a public utility must install, operate and maintain its generating and interconnection facilities in compliance with the IEEE standards, as applicable, and the requirements of the interconnection agreement or other agreements executed between the parties during the interconnection review and approval process. Generating facilities in operation or approved for operation prior to the effective date of this rule must be operated and maintained in

accordance with the requirements of all agreements in place prior to the effective date of this rule.

(2) Disconnect Switch. Except for the exemptions listed below, an interconnection customer of a public utility must install and maintain a manual disconnect switch which will disconnect the generating facility from the public utility's distribution system. The disconnect switch must be a lockable, load-break switch that plainly indicates whether it is in the open or closed position. The disconnect switch must be readily accessible to the public utility at all times and located within 10 feet of the public utility's meter.

(a) Exemptions:

(i) For customer generating systems of 10 kilowatts or less that are inverter-based, a public utility shall not require a disconnect switch.

(ii) The disconnect switch may be located more than 10 feet from the public utility meter if permanent instructions are posted in letters of appropriate size at the meter indicating the precise location of the disconnect switch. In this case the public utility must approve in writing the location of the disconnect switch prior to the installation of the generating facility. For those instances where the interconnection customer and the public utility cannot agree to the implementation of this section, the public utility or interconnection customer may refer the matter to the Commission according to the designated dispute resolution process.

(iii) Nothing in this exemption precludes an interconnection customer or a public utility from voluntarily installing a manual disconnect switch.

(3) In the event that no disconnect switch is installed, the interconnection customer's electric service may be disconnected by the public utility entirely if the generating facility must be physically disconnected from the public utility's distribution system as specified in Subsection R746-312-4(5).

(4) For those public utilities whose governing authority, pursuant to Section 54-15-106, after appropriate notice an opportunity for public comment, elects to adopt by rule additional reasonable interconnection safety, power quality and interconnection requirements for net metering generating facilities and who determines that a disconnect switch for net metering generating facilities less than 10 kilowatts is necessary, those public utilities must:

(a) address the usage of the disconnect switch in the public utility's operations training requirements and standard operating procedures, including, among other things, how the disconnect switches will be managed, including tracking of switches, the procedures under which the disconnect switch must be used during normal operations, construction projects, trouble situations, and during restoration of service activities, and training on operation and usage of the disconnect switch;

(b) file a copy of the disconnect switch procedures, and any updates, along with the governing authority's documentation of appropriate notice and opportunity for public comment with the commission; and

(c) document in writing each time the public utility has utilized each specific disconnect switch and the reason for its usage and make this information available to the commission upon request.

(5) The public utility may operate the manual disconnect switch or disconnect the customer generating facility pursuant to the conditions set forth below, thereby isolating the customer generating

system, without prior notice to the customer. To the extent practicable, however, prior notice shall be given. If prior notice is not given, the utility shall at the time of disconnection leave a door hanger or other such notice notifying the customer that their customer generating system has been disconnected, including an explanation of the condition necessitating such action. The public utility shall reconnect the customer generating system as soon as reasonably practicable after the condition necessitating disconnection is remedied.

(a) Any of the following conditions shall be cause for the public utility to manually disconnect a generating facility from its system:

(i) Emergencies or maintenance requirements on the public utility's distribution system;

(ii) Hazardous conditions existing on the public utility's distribution system which may affect safety of the general public or public utility employees due to the operation of the customer generating facility or protective equipment as determined by the public utility; or

(iii) Adverse electrical effects (Such as high or low voltage, unacceptable harmonic levels, or RFI interference) on the electrical equipment of the public utility's other electric consumers caused by the customer generating facility as determined by the public utility.

(6) Subsequent to becoming interconnected to a public utility the interconnection customer must notify the public utility of all proposed modifications to the generating facility or equipment package which will increase the generation capacity of a customer generation facility.

(a) Notification must be provided in the form of a new application submitted in accordance with the level of review required by this rule; and

(b) The application must specify the proposed modification(s).

(7) Aggregating Multiple Generators: If the interconnection request is for a generating facility which includes multiple generating facilities at a site for which the interconnection customer seeks a single point of interconnection, the interconnection request must be evaluated for the purposes of the interconnection on the basis of the aggregate electric nameplate capacity of the generating facilities.

R746-312-5. Interconnection Facility Certification.

(1) To qualify for the Level 1 and the Level 2 interconnection review procedures set forth below, a generating facility must be certified as complying with the following standards, as applicable:

(a) IEEE standards; and

(b) UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems (January 2001).

(2) An equipment package will be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with relevant codes and standards.

(3) If the equipment package has been tested and listed in accordance with this section as an integrated package, which includes a generator or other electric source, the equipment package

will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

(4) If the equipment package includes only the interface components (switchgear, inverters, or other interface devices), an interconnection customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and consistent with the testing and listing specified for the package. If the generator or electric source being utilized with the equipment package is consistent with the testing and listing performed by the nationally recognized testing and certification laboratory, the equipment package will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

R746-312-6. General Interconnection Request Provisions.

(1) Each public utility must designate an employee, office, or department from which a customer can obtain basic interconnection request standard forms, standard form agreements, and information through an informal process. Upon request, this employee, office, or department must provide all relevant forms, documents, and technical requirements for submittal of a complete application for interconnection review. Upon request, the public utility must meet with a customer who qualifies for Level 2 or Level 3 interconnection review, to assist them in preparation of the application. All standard forms and standard form agreements must be posted on the public utility's website.

(2) The interconnection customer must submit each interconnection request, and all associated forms and agreements on the public utility's standard forms and standard form agreements. The interconnection request may require the following types of information:

(a) the name of the applicant and basic customer information;

(b) the type, size and specifications of the generating facility;

(c) the level of interconnection review sought; e.g., Level 1, Level 2 or Level 3;

(d) the generating facility installer: i.e., for contractor installations, the name of the appropriately licensed contractor, or for self-installations, the name of the homeowner or business;

(e) equipment and/or system certifications;

(f) the anticipated date the generating facility will be operational;

(g) evidence of site control; and/or

(h) other information that the utility deems is necessary to conduct an evaluation as to whether a generating facility can be safely and reliably connected to the public utility in compliance with this interconnection rule.

(3) Each interconnect request submitted to a public utility must be accompanied by the required processing fee.

(4) An interconnection customer shall retain its original queue position for an interconnection request if the applicant resubmits its application at a higher level of review within 30 business days of a utility's denial of the application at a lower level of review.

(5) A public utility shall not be responsible for the cost of determining the rating of equipment owned or proposed by an interconnection customer or of equipment owned by other local customers.

(6) At the time of application, an interconnection customer may choose to simultaneously submit an executed original of the public utility's standard form interconnection agreement.

(7) Any modification to machine data or equipment configuration or to the interconnection site of the generating facility not agreed to in writing by the public utility and the interconnection customer may be deemed a withdrawal of the interconnection request and may require submission of a new interconnection request unless proper notification to each party by the other and a reasonable time to cure the problems created by the changes are undertaken.

(8) Each party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without prior written authorization from the party providing that information, except to fulfill obligations under this rule, or to fulfill legal or regulatory requirements. Each party shall employ at least the same standard of care to protect confidential information obtained from the other party as it employs to protect its own confidential information.

R746-312-7. Level 1 and Level 2 Interconnection Review Screens.

(1) The public utility shall perform its review of Level 1 and Level 2 interconnection requests using the screens set forth below as applicable.

(a) A generating facility's point of common coupling must be on a portion of the public utility's distribution system which is under the interconnection jurisdiction of the commission and not be on a transmission line.

(b) For interconnection of a proposed generating facility to a radial distribution circuit, the aggregate generation on the distribution circuit, including the proposed generating facility, must not exceed 15 percent of the distribution circuit's total highest annual peak load, as measured at the substation. For the purposes of this subsection, annual peak load will be based on measurements taken over the 60 months previous to the submittal of the application, measured for the circuit at the nearest applicable substation.

(c) The proposed generating facility, in aggregation with other generation on the distribution circuit to which the proposed generating facility will interconnect, must not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of common coupling.

(d) If the proposed generating facility is to be connected to a single-phase shared secondary, the aggregate generation capacity connected to the shared secondary, including the proposed generating facility, must not exceed 20 kilowatts.

(e) If a proposed single-phase generating facility is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the proposed generating facility must not create a current imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

(f) No construction of facilities by the public utility on its own system shall be required to accommodate the generating facility.

(g) The aggregate generation capacity on the distribution circuit to which the proposed generating facility will interconnect, including the capacity of the proposed generating facility, must not

cause any distribution protective equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the electric distribution system, to exceed 90 percent of the short circuit interrupting capability of the equipment. In addition, a proposed generating facility must not be connected to a circuit which already exceeds 90 percent of the circuit's short circuit interrupting capability, prior to interconnection of the facility.

(h) Interconnection Type Screen:

(i) For a proposed generating facility connecting to a three-phase, three wire primary public utility distribution line, a three-phase or single-phase generator must be connected phase-to-phase.

(ii) For a proposed generating facility connecting to three-phase, four wire primary public utility distribution line, a three-phase or single-phase generator must be connected line-to-neutral and must be effectively grounded.

(i) If there are known or posted transient stability limitations to generating units located in the general electrical vicinity of the proposed point of common coupling, including, but not limited to within three or four transmission voltage level busses, the aggregate generation capacity, including the proposed generating facility, connected to the distribution low voltage side of the substation transformer feeding the distribution circuit containing the point of common coupling may not exceed 10 megawatts.

(j) If a proposed generating facility's point of common coupling is on a spot network, the proposed generating facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, must not exceed the smaller of five percent of a spot network's maximum load.

R746-312-8. Level 1 Interconnection Review.

(1) A generating facility which meets the following criteria is eligible for Level 1 interconnection review:

(a) the generating facility is inverter-based; and

(b) the generating facility has a capacity of 25 kilowatts or less.

(2) A public utility shall process, evaluate, and approve, if appropriate, all Level 1 interconnection requests according to this Subsection unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 1 interconnection request within 15 business days of receipt of the interconnection request, or the public utility completes final approval of a Level 1 interconnection request within 15 business days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 1 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt, the public utility shall evaluate the interconnection request and notify the interconnection customer whether the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using screens set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer either:

(i) the generating facility meets all applicable criteria and the interconnection request is approved; or

(ii) the generation facility has failed to meet one or more of the applicable criteria, the reason for the failure, and the interconnection request is denied under the Level 1 interconnection process. If the interconnection request is denied the interconnection customer may resubmit the application under the Level 2 or Level 3 interconnection review procedure, as appropriate.

(e) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(f) If a public utility does not notify a Level 1 interconnection customer in writing or by electronic mail whether the interconnection request is approved or denied within 25 business days after the receipt of an application, the interconnection request shall be deemed approved.

(3) An interconnection customer must notify the public utility of the anticipated start date for operation of the generating facility at least ten business days prior to starting operation, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval indicating the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(5) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 30 business days to resolve any deficiencies. The Parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-9. Level 2 Interconnection Review.

(1) A generating facility which meets the following criteria is eligible for Level 2 interconnection review by a public utility:

(a) the generating facility has a capacity of two megawatts or less; and

(b) the generating facility does not qualify for or fails to meet applicable Level 1 interconnection review procedures.

(2) A public utility must process, evaluate, and approve, if so determined, all Level 2 requests for interconnection according to the following steps unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 2 interconnection request within 15 business days of receipt of the interconnection request, the public utility completes final approval of a Level 2 interconnection request within 15 business days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 2 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using the screens set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer either:

(i) the generation facility meets all applicable criteria and the interconnection request is approved;

(ii) although the generating facility fails one or more of the screens, the public utility has determined that the generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards and the interconnection request is approved; or

(iii) the generation facility has failed to meet one or more of the screens and the reason for the failure(s), the public utility has not or could not determine from the initial reviews that the generating facility may be interconnected consistent with safety, reliability, and power quality standards, or the generating facility cannot be approved without minor modifications at minimal cost and the interconnection request is denied unless the interconnection customer is willing to consider minor modifications or further study.

(e) If the interconnection request is denied, the public utility:

(i) must offer to provide the interconnection customer with the opportunity to attend an optional customer options meeting to be convened within 10 business days of the notification of denial to discuss the options available under Subsection R746-312-9(2)(e)(ii).

(A) During the customer options meeting the public utility shall review possible interconnection customer facility modification or screen analysis and related results to determine what further steps are needed to permit the generating facility to be connected safely and reliably.

(ii) shall either at the time of the notification specified in Subsection R746-213-9(2)(d)(iii), or at the customer options meeting:

(A) offer to complete facility modifications or minor modifications to the public utility's distribution system and provide a non-binding good faith estimate of the cost and time-frame to make such modifications. If the interconnection customer agrees to such modifications, the interconnection customer shall agree in writing within 15 business days of the offer and submit payment for the estimated costs. The interconnection customer must pay any cost that exceeds the estimated costs within 20 business days of receipt of the invoice. If the costs to complete the modifications are less than the estimated costs, the public utility shall return such excess within 20 business days of the issuance of the invoice without interest.

(B) offer to perform a supplemental review in accordance with Subsection R746-312-9(3) if the public utility concludes that the supplemental review might determine that the generating facility could continue to qualify for interconnection pursuant to the Level 2 process, and provide a non-binding good faith estimate of the costs of such review; or

(C) obtain the interconnection customer's agreement to continue evaluating the interconnection request under the Level 3 process.

(f) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility shall provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) an inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(3) Supplemental Review:

(a) If the interconnection customer agrees to a supplemental review, the interconnection customer shall agree in writing within 15 business days of the offer, and submit a deposit of the estimated costs. The interconnection customer shall be responsible for the public utility's actual costs for conducting the supplemental review. The interconnection customer must pay any review costs that exceed the deposit within 20 business days of receipt of the invoice. If the deposit exceeds the invoiced costs, the public utility shall return such excess within 20 business days of the invoice without interest.

(b) Within 10 business days following receipt of the deposit for supplemental review, the public utility must determine whether the generating facility can or can not be interconnected safely and reliably and shall notify the interconnection customer either:

(i) the generation facility can be safely and reliably interconnected and the interconnection request is approved and the public utility shall proceed according to Subsection R746-312-9(2)(f);

(ii) interconnection customer facility modifications are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. Upon receipt of written confirmation that the interconnection customer agrees to make the necessary changes at the interconnection customer's expense, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iii) minor modification to the public utility's distribution system are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. After confirmation that the interconnection customer agrees to pay the costs of such system modifications prior to interconnection, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iv) the results of the supplemental review have not concluded that the generating facility can be interconnected consistent with safety, reliability, and power quality standards and, upon agreement by the interconnection customer, the

interconnection request will continue to be evaluated under the Level 3 interconnection review process.

(4) An interconnection customer must notify the public utility of the anticipated testing and inspection date for the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(5) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval and that the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(6) If an application for Level 2 interconnection review is denied because it does not meet one or more of the requirements in this section, the applicant may resubmit the application under the Level 3 interconnection review procedure.

(7) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 45 business days to resolve any deficiencies. The parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-10. Level 3 Interconnection Review.

(1) A generating facility which meets the following criteria is eligible for Level 3 interconnection review:

(a) the generating facility has a capacity of greater than two megawatts but no larger than 20 megawatts;

(b) the generating facility is not certified; or

(c) the generating facility does not qualify for or failed to meet Level 1 or Level 2 interconnection review requirements.

(2) A public utility must process, evaluate, and approve, if appropriate, all Level 3 requests for interconnection according to the following steps unless the public utility has received approval from the commission for an alternate Level 3 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business-day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Scoping Meeting. If requested, a scoping meeting shall be held as follows within 10 business days after the interconnection request is deemed complete, or as otherwise mutually agreed to by the parties:

(i) The public utility and the interconnection customer shall bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting;

(ii) The purpose of the scoping meeting is to:

(A) discuss the interconnection request and review existing studies relevant to the interconnection request; and

(B) discuss whether the public utility should perform a feasibility study or proceed directly to a system impact study, a facilities study, or an interconnection agreement;

(iii) Scoping meeting follow-up:

(A) If the parties agree that a feasibility study should be performed, the public utility shall provide the interconnection customer as soon as possible, but no later than five business days after the scoping meeting, a feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(B) If the parties agree not to perform a feasibility study, the public utility shall, no later than five business days after the scoping meeting, provide the interconnection customer with a system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(iv) The scoping meeting may be omitted by mutual agreement. If the scoping meeting is omitted, the public utility, if requested by the interconnection customer, must provide information pertinent to the interconnection request, such as the available fault current at the proposed interconnection location, the peak loading on the lines in the general vicinity of the generating facility, and the configuration of the distribution lines at the proposed point of common coupling, within 10 business days after the interconnection request is deemed complete.

(e) Feasibility Study. A feasibility study shall provide a preliminary evaluation of the system impact which would result from interconnecting the generating facility and the cost of interconnecting the generating facility to the public utility's electric distribution system and shall be completed as follows:

(i) For interconnection customers opting to forego a scoping meeting and proceeding directly to the feasibility study, the public utility shall provide the interconnection customer, as soon as possible but no later than 10 business days after receipt of a completed application, a standard form feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested or

requires a feasibility study, either as part of or independent of a scoping meeting, must return the executed feasibility study agreement within 30 business days of receipt. A deposit of the lesser of 50 percent of the good faith estimate or earnest money of \$1,000 may be required from the interconnection customer.

(iii) Within 30 business days of receipt of an executed study agreement and payment of any required deposit, the public utility shall conduct the feasibility study and notify the interconnection customer either:

(A) the feasibility study shows no potential for adverse system impacts, no facilities are required, and the interconnection request is approved, in which case the public utility shall send the interconnection customer an executable interconnection agreement within five business days;

(B) the feasibility shows no potential for adverse system impacts however additional facilities may be required and the review process shall proceed to a facilities study, in which case the public utility shall provide the interconnection customer a standard form facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within five business days; or

(C) the feasibility study shows the potential for adverse system impacts, and the review process shall proceed to a system impact study, in which case the public utility shall provide the interconnection customer with a standard form system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within 15 business days of transmittal of the feasibility study report.

(iv) Any study fees will be invoiced to the interconnection customer after the study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(f) System Impact Study. Any required system impact study(s) must be conducted in accordance with good utility practice and shall be completed as follows:

(i) The system impact study shall:

(A) provide details on the impacts to the electric distribution system which would result if the generating facility were interconnected without modifications to either the generating facility or to the electric distribution system;

(B) identify any modifications to the public utility's electric distribution system necessary to accommodate the proposed interconnection;

(D) focus on power flows and utility protective devices, including control requirements; and

(E) include the following elements, as applicable:

(I) a load flow study;

(II) a short-circuit study;

(III) a circuit protection and coordination study;

(IV) the impact on the operation of the electric distribution system;

(V) a stability study, along with the conditions that would justify including this element in the impact study;

(VI) a voltage collapse study, along with the conditions that would justify including this element in the impact study; and

_____ (VII) additional elements, if justified and approved in writing by the commission prior to the impact study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested a system impact study, either as part of or independent of a scoping meeting or feasibility study, must return the executed impact study agreement(s) within 30 business days of receipt of the agreement. A deposit of the good faith estimated costs for each system impact study may be required from the interconnection customer.

(iii) After the applicant executes the system impact study agreement and pays any required deposit, the public utility shall complete the impact study and distribute the results to the interconnection customer within 30 business days or 45 business days for transmission impact studies, notifying the interconnection customer either:

(A) Only minor modifications to the public utility's electric distribution and/or transmission system are necessary to accommodate interconnection. In such a case, the public utility must:

(I) provide to the interconnection customer at the same time the detail of the scope of the necessary modifications, a non-binding, good faith estimate of their cost, and an executable interconnection agreement; and

(II) approve the interconnection request upon receipt from the interconnection customer the executed interconnection agreement.

(B) Modifications to the public utility's electric distribution system and/or transmission system are necessary to accommodate the proposed interconnection in which case the public utility must provide at the same time either:

(I) a non-binding, good faith estimate of the cost of the modifications, if known, and

(II) a standard form facilities study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study.

(iv) If the proposed interconnection may affect electric transmission or delivery systems other than those controlled by the public utility, operators of those other systems may require additional studies to determine the potential impact of the interconnection on those systems. If such additional studies are required, the public utility must coordinate the studies but will not be responsible for their timing. The applicant shall be responsible for the costs of any such additional studies required by another affected system. Such studies will be conducted only after the applicant has provided written authorization.

(v) Any study fees will be invoiced to the interconnection customer after the study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(g) Facilities Study. The results of the facilities study shall specify a non-binding good faith cost estimate of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusion of the system impact study(s) in order for the interconnection customer to safely interconnect the generating facility with the public utility's

electric distribution system and the time required to build and install those facilities. The following provisions apply to the facilities study:

(i) A public utility may require a deposit of the good faith estimated costs for the facilities study.

(ii) In order to remain under consideration for interconnection, the interconnection customer must return the executed facilities study agreement and any required deposit, or request an extension of time, within 30 business days.

(iii) Design for any required interconnection facilities and/or upgrades shall be performed under the facilities study agreement. The public utility may contract with consultants to perform activities required under the facilities study agreement. The interconnection customer and the public utility may agree to allow the interconnection customer to separately arrange for the design of some of the interconnection facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the public utility under the provisions of the facilities study agreement. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the public utility shall make sufficient information available to the interconnection customer in accordance with confidentiality and critical infrastructure requirements to permit the interconnection customer to obtain an independent design and cost estimate for any necessary facilities.

(iv) In cases where upgrades are required, the facilities study must be completed and the facilities study report transmitted to the interconnection customer's within 45 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed and the facilities study report transmitted to the interconnection customer in 30 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. The report and any ensuing interconnection agreement must list the conditions and facilities necessary for the generating facility to safely interconnect with the public utility's electric distribution system, and must include a non-binding, good faith estimate of the cost of those facilities and the estimated time required to build and install those facilities.

(iv) Upon completion of the facilities study and receipt of agreement of the interconnection customer to pay for interconnection facilities and upgrades identified in the facilities study, the public utility shall approve the interconnection request.

(v) Any study fees will be invoiced to the interconnection customer after the study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(h) Either prior to, along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, for final authorization of the interconnection, as determined applicable

by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement.

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generating facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(3) An interconnection customer must notify the public utility of the anticipated testing and inspection date of the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval and that the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(5) Witness Test Not Acceptable: If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 60 business days to resolve any deficiencies. The parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-11. Interconnection Metering.

(1) Metering: For generating facilities not subject to the provisions of Section 54-15, the interconnection customer shall be responsible for the cost of the purchase and installation of any special metering and data acquisition equipment deemed necessary by the terms of the interconnection agreement unless the public utility determines otherwise. The public utility must install, maintain and operate the metering equipment. The parties must mutually grant unrestricted access to such equipment as may be necessary for the purposes of conducting routine business.

(2) For generating facilities subject to the provisions of Section 54-15, metering equipment and costs for such metering equipment shall be determined as specified in Section 54-15-103. The public utility must install, maintain and operate the metering equipment. The parties must mutually grant unrestricted access to such equipment as may be necessary for the purposes of conducting routine business.

R746-312-12. Interconnection Monitoring.

(1) Generating facilities approved and interconnected to the public utility under the Level 1 and Level 2 interconnection review processes, and generating facilities with nameplate capacities of 3 megawatts or less approved under the Level 3 interconnection review process, except as noted herein, are not required to provide for remote monitoring of the electric output by the public utilities.

(2) Generating facilities approved under Level 3 Interconnection Applications with Electric Nameplate Capacities greater than 5 MW or Level 3 Interconnection Applications where the aggregated generation on the circuit, including the interconnection customer's generating facility, would exceed 50 percent of the line section annual peak load may be required to provide remote monitoring at the public utility's discretion if the public utility has required such monitoring of its own facilities.

(3) If a public utility determines monitoring data provided by telemetry is necessary for safe, reliable and efficient operations of a proposed generating facility with an electric nameplate capacity of greater than 3 megawatts to 5 megawatts, the public utility may petition the commission on a case by case basis to impose monitoring and telemetry requirements such facilities. Any such petition must be accompanied by evidence supporting telemetry needs and requirements.

(4) For generating facilities required to provide remote monitoring pursuant to Subsections R746-312-12(2) and (3), the data acquisition and transmission to a point where it can be used by the public utility's control system operations must meet the performance based standards as follows:

(a) Any data acquisition and telemetry equipment required by this rule must be installed, operated and maintained at the interconnection customer's expense.

(b) Telemetry requirements:

(i) parties may mutually agree to waive or modify any of the telemetry requirements contained herein.

(ii) the communication must take place via a Private Network Link using a Frame Relay or Fractional T-1 line or other such suitable device. Dedicated Remote Terminal Units, from the generating facility to the public utility's substation and Energy Management System are not required.

(iii) a single communication circuit from the generating facility to the public utility is sufficient.

(iv) communications protocol must be DNP 3.0 or other standard used by the public utility.

(v) the generating facility must be capable of sending telemetric monitoring data to the public utility at a minimum rate of every 2 seconds (from the output of the generating facility's telemetry equipment to the public utility's energy management system).

(vi) the minimum data points that a generator facility is required to provide telemetric monitoring to the public utility are:

(A) net real power flowing out or into the generating facility (analog);

(B) net reactive power flowing out or into the generating facility (analog);

(C) bus bar voltage at the point of common coupling (analog);

(D) data processing gateway (DPG) heartbeat (used to certify the telemetric signal quality); and

(E) on-line or off-line status (digital).

(vii) If an interconnection customer operates the equipment associated with the high voltage switchyard interconnecting the generating facility to the public utility's distribution system, and is required by to provide monitoring and telemetry, the interconnection customer must provide the following monitoring to the public utility in addition to provisions in Subsection R746-312-12(4)(b)(vi):

(A) switchyard line and transformer MW and MVAR values;

(B) switchyard bus voltage; and

(C) switching devices status

R746-312-13. Interconnection Fees and Charges.

(1) For Level 1 interconnection review:

(a) A public utility whose rates are determined by the commission may not charge an application, or other fee, to an applicant that requests Level 1 interconnection review. However, if an application for Level 1 interconnection review is denied because it does not meet the requirements for Level 1 interconnection review, and the applicant resubmits the application under the Level 2 or Level 3 review procedure, the public utility may impose a fee for the resubmitted application, consistent with this section.

(b) All other public utilities may determine reasonable fees or charges for interconnection, however for those interconnections which fall under the provisions of Section 54-15, the fees must be determined in accordance with Section 54-15-105.

(2) For a Level 2 interconnection review:

(a) A public utility whose rates are determined by the commission may charge fees of up to \$50.00 plus \$1.00 per kilowatt of the generating facility's capacity to cover the costs of the interconnection request review, plus the reasonable cost of any required minor modifications to the electric distribution system or additional reviews. Costs for such minor modifications or additional review will be based on the public utility's non-binding, good faith estimates and the ultimate actual installed costs. Costs for engineering work done as part of any additional review or studies shall not exceed \$100.00 per hour. A public utility may adjust the \$100.00 hourly rate once each year to account for inflation and deflation.

(3) For a Level 3 interconnection review:

(a) A public utility whose rates are determined by the commission may charge fees of up to \$100.00 plus \$2.00 per kilowatt of the generating facility's capacity, as well as charges for actual time spent on any required impact or facilities studies. Costs for engineering work done as part of a feasibility, impact, or facilities study shall not exceed \$100.00 per hour. A public utility may adjust the \$100.00 hourly rate once each year to account for inflation and deflation as measured by the 12 months unadjusted Consumer Price Index for all items calculated for December of the previous year. If the public utility must install facilities in order to accommodate the interconnection of the generating facility, the cost of such facilities shall be the responsibility of the applicant.

R746-312-14. Requirements After Interconnection Approval.

(1) A public utility may not require an applicant whose facility meets the criteria for interconnection approval under the Level 1 or Level 2 interconnection review procedures to perform or pay for additional tests, except if agreed to by the applicant. In

addition, a public utility may not require an interconnection customer whose net metering generating facility is in compliance with Section 54-15-106 to perform or pay for additional tests.

(2) A public utility may not charge any fee or other charge for connecting to the public utility's distribution system or for operation and maintenance of a generating facility for the purposes of generating electricity, except for the fees provided for under this interconnection rule and approved standard form agreements or determined by the governing authority.

(3) Once an interconnection has been approved under this interconnection rule, the public utility may not require an interconnection customer to test or perform maintenance on its facility except for the following and subject to the provision of Section 54-15-106:

(a) any manufacturer-required testing or maintenance;

(b) any post-installation testing necessary to ensure compliance with IEEE standards or to ensure safety;

(c) the interconnection customer replaces a major equipment component that is different from the originally installed model; and/or

(d) an annual test to be performed at the discretion of and paid for by the public utility in which the generating facility is disconnected from the public utility's equipment to ensure the inverter stops delivering power to the grid.

(4) When an approved generating facility undergoes maintenance or testing in accordance with the requirements of this interconnection rule, the interconnection customer must retain written records for three years documenting the maintenance and the results of testing.

(5) A public utility has the right to inspect an interconnection customer's facility after interconnection approval is granted, at reasonable hours and with reasonable prior notice to the interconnection customer. If the public utility discovers that the generating facility is not in compliance with the requirements of this interconnection rule or executed agreements, the public utility may require the interconnection customer to disconnect the generating facility until compliance is achieved.

(6) Subsequent to becoming interconnected to a public utility the interconnection customer must notify the public utility of all proposed modifications to the generating facility or equipment package pursuant to Subsection R746-312-4(6).

R746-312-15. Aggregation of Meters for Net Metering Interconnection.

(1) For the purpose of measuring electricity usage under the net metering program, a public utility must, upon request from an interconnection customer, aggregate for billing purposes a meter to which the net metering facility is physically attached ("designated meter") with one or more meters ("additional meter") in the manner set out in this section. This rule is applicable only when:

(a) the additional meter is located on or adjacent to the premises of the electrical corporation's customer, subject to the electrical corporation's service requirements;

(b) the additional meter is used to measure only electricity used for the interconnection customer's requirements;

(c) the designated meter and the additional meter are subject to the same rate schedule; and

(d) the designated meter and the additional meter are served by the same primary feeder.

(2) An interconnection customer must give at least 30 business days notice to the utility to request that additional meters be included in meter aggregation. The specific meters must be identified at the time of such request. In the event that more than one additional meter is identified, the interconnection customer must designate the ranking order for the additional meters to which net metering credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, are to be applied.

(3) The aggregation of meters will apply only to charges that use kilowatt-hours as the billing determinant. All other charges applicable to each meter account shall be billed to the interconnection customer.

(4) If in a monthly billing period the net metering facility supplies more electricity to the public utility than the energy usage recorded by the interconnection customer's designated meter, the utility will apply credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, to the next monthly bill for the excess kilowatt-hours first to the designated meter, then to additional meters that are on the same rate schedule as the designated meter.

(5) If an additional meter changes service to a rate schedule that is different than the designated meter, the additional meter is not eligible for net metering credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, for the remainder of the billing year and until such time as the additional meter receives service on the same rate schedule as the designated meter.

(6) If the designated meter changes service to a different rate schedule, aggregation of net metering credits is not allowed for the remainder of the billing year and may not occur until such time as the additional meters receive service on the same rate schedule as the designated meter.

(7) With the governing authority's prior approval pursuant to Section 54-15-105, a public utility may charge the interconnection customer requesting to aggregate meters a reasonable fee to cover the administrative costs of this provision.

R746-312-16. Public Utility Maps, Records and Reports.

(1) Each public utility shall maintain current records of interconnection customer generating facilities showing size, location, generator type, and date of interconnection authorization.

(2) By July 1 of each year, the public utility shall submit to the commission an annual report with the following summary information for the previous calendar year:

(a) the total number of generating facilities approved and their associated attributes including resource type, generating capacity, and the county and zip code of generating facility location.

(b) the total rated generating capacity of generating facilities by resource type.

(c) for net metering interconnections, the total net excess generation kilowatt-hours received from interconnection customers by month.

(d) for net metering interconnections, the total amount of excess generation credits in kilowatt hours, and their associated dollar value, which have expired at the end of each annualized billing period.

R746-312-17. Interconnection-related Agreements.

(1) Contents of Standard Interconnection Agreement. All standard form interconnection agreements shall, at a minimum, contain the following:

(a) a requirement that the generating facility must be inspected by a local building code official prior to its operation in parallel with the public utility to ensure compliance with applicable local codes.

(b) provisions that permit the public utility to inspect interconnection customer's generating facility and its component equipment, and the documents necessary to ensure compliance with this rule. The customer shall notify the public utility as required by this rule prior to initially placing customer equipment and protective apparatus in service, and the public utility shall have the right to have personnel present on the in-service date. If the generating system is subsequently modified in order to increase its gross power rating, the customer must notify the public utility by submitting a new application specifying the modifications in accordance with the level of review required for the application.

(c) a provision that the customer is responsible for protecting the generating equipment, inverters, protective devices, and other system components from damage from the normal and abnormal conditions and operations that occur on the public utility system in delivering and restoring power; and is responsible for ensuring that the generating facility equipment is inspected, maintained, and tested in accordance with the manufacturer's instructions to ensure that it is operating correctly and safely.

(d) a provision that the customer shall hold harmless and indemnify the public utility for all loss to third parties resulting from the operation of the generating facility, except when the loss occurs due to the negligent actions of the public utility and a provision that the public utility shall hold harmless and indemnify the customer for all loss to third parties resulting from the operation of the public utility's system, except when the loss occurs due to the negligent actions of the customer.

(e) Insurance:

(i) If an interconnection customer whose generating facility is no greater than two megawatts in size complies with the provisions of the interconnection request approval, interconnection agreement, and standards identified in Section 54-15-106, a public utility may not require that interconnection customer to purchase additional liability insurance.

(ii) all other interconnection customers are required to obtain prudent amounts of general liability insurance in an amount sufficient to protect other parties from any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of the provisions of the this rule or the interconnection agreement. Neither party may seek redress from the other party in an amount greater than the amount of direct damage actually incurred. An interconnection customer of sufficient credit-worthiness may propose to self-insure for such liabilities and such proposal shall not be unreasonably rejected.

(f) identification of any fees or charges approved pursuant to this rule or applicable law.

KEY: interconnection, generating equipment, renewable energy facilities, public utilities **Authorizing, and Implemented or Interpreted Law:** 54-4-7; 54-4-14; 54-12-2; 54-15-106
Date of Enactment or Last Substantive Amendment: 2009

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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

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

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends October 01, 2009.

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.

From the end of the 30-day waiting period through December 30, 2009, an 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 the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. 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** by the end of the 120-day period after publication, 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 Section 63G-3-303; 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

**Administrative Services, Facilities
Construction and Management
R23-23
Health Reform -- Health Insurance
Coverage in State Contracts --
Implementation**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 32772
FILED: 8/10/09 1:31 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is made at the request of Hunter Finch, Governor's Office of Planning and Budget, to correct an incorrect citation in Subsection R23-23-4(3). The current rule and state law provides for and refers to the benchmark plan which is currently SelectHealth. It would be more efficient and appropriate to post the details of the benchmark plan on the Division of Facilities Construction and Management's (DFCM) website rather than having the contractors contact SelectHealth. This change will delete SelectHealth contact information and insert the DFCM website address.

SUMMARY OF THE RULE OR CHANGE: This rule change will correct an incorrect citation in Subsection R23-23-4(3). This change will delete SelectHealth contact information and insert the DFCM website address. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the July 15, 2009, issue of the Utah State Bulletin, on page 3. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-205 and Subsection 63A-5-103(1)(e)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because this is simply a change to an incorrect citation and relocation of information in the previously filed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will not cause a fiscal impact because this simply corrects an incorrect citation. This change will not cause a fiscal impact because it is simply a relocation of information. It was determined it will be more efficient and appropriate to post the details of the benchmark plan on the DFCM website rather than having the contractors contact SelectHealth.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at ldye@utah.gov
- ◆ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/01/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2009

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.
R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.

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R23-23-4. Applicability of Rule.

(1) Except as provided in Rule R23-23-4(2) below, this Rule R23-23 applies to all contracts entered into by the Division or the Board on or after July 1, 2009, if:

- (a) the contract is for design and/or construction; and
- (b) the prime contract is in the amount of \$1,500,000 or greater; or
- (i) a subcontract, at any tier, is in the amount of \$750,000 or greater.

(2) This Rule R23-23 does not apply if:

- (a) the application of this Rule R23-23 jeopardizes the receipt of federal funds,
- (b) the contract is a sole source contract,
- (c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in Section ~~[63G-6-102]~~63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Rule R23-23-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

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R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor (including consultants, designers and others under contract with the Division) that is subject to the requirements of this Rule no later than the time of execution of the contract:

(a) demonstrate compliance by a written certification to the Director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees; and

(b) The contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors (including subconsultants) at any tier that is subject to the requirements of this Rule.

(2) Recertification. The Director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsections 63A-5-205(1)(e)(i) and (iii) is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer.

For purposes of this Rule R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding any of the following:

(a) In accordance with Section 26-40-106(2)(a), the largest insured commercial enrollment offered by a health maintenance organization in the State, ~~[which the Children's Health Insurance Program has determined is the SelectHealth plan currently offered by SelectHealth, 4646 West Lake Park Blvd, Salt Lake City, Utah 84130. The reference to SelectHealth herein is to provide an example of a qualifying plan and is not intended to endorse or indicate a preference for the use of SelectHealth as the insurance provider in any way, or]~~which details of the plan are provided on the website of the Division at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>; or

(b) provides coverage that is actuarially equivalent to 75 percent of the benefit plan determined under Rule R23-23-7(3)(a) above and employer's premium contribution as required by statute.

(4) The health insurance must be available upon the first of the month following the initial ninety (90) days from the beginning of employment.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who violates the provisions of this Rule shall be liable to the employee for health care costs not covered by insurance.

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KEY: health insurance, contractors, contracts
Date of Enactment or Last Substantive Amendment: 2009
Authorizing, and Implemented or Interpreted Law:
63A-5-103(1)(e); 63A-5-205

**Capitol Preservation Board (State),
 Administration
 R131-13
 Health Reform -- Health Insurance
 Coverage in State Contracts --
 Implementation**

NOTICE OF CHANGE IN PROPOSED RULE
 DAR FILE NO.: 32778
 FILED: 8/13/09 3:35 PM

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is made at the request of Hunter Finch, Governor's Office of Planning and Budget, to correct an incorrect citation in Section R131-13-4(3). The current rule and state law provides for and refers to the benchmark plan which is currently SelectHealth. It would be more efficient and appropriate to post the details of the benchmark plan on the Division of Facilities Construction and Management's (DFCM) website rather than having the contractors contact SelectHealth. This change will delete SelectHealth contact information and insert the DFCM website address.

SUMMARY OF THE RULE OR CHANGE: This rule change will correct an incorrect citation in Subsection R131-13-4(3). This change will delete SelectHealth contact information and insert the DFCM website address. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the July 15, 2009, issue of the Utah State Bulletin, on page 5. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike

out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-403 and Subsection 63C-9-301(3)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities as this is simply a change to an incorrect citation and relocation of information in the previously filed rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because this is simply a change to an incorrect citation and relocation of information in the previously filed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will not cause a fiscal impact because this simply corrects an incorrect citation. This change will not cause a fiscal impact because it is simply a relocation of information. It was determined it will be more efficient and appropriate to post the details of the benchmark plan on the DFCM website rather than having the contractors contact SelectHealth.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CAPITOL PRESERVATION BOARD (STATE)
 ADMINISTRATION
 ROOM E110 EAST BUILDING
 420 N STATE ST
 SALT LAKE CITY, UT 84114-2110
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Hart by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at dhart@utah.gov
- ◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at ldye@utah.gov
- ◆ Sarah Whitney by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at switney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN 5:00 PM ON 10/01/2009

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2009

AUTHORIZED BY: David Hart, AIA, Executive Director

**R131. Capitol Preservation Board (State), Administration.
R131-13. Health Reform -- Health Insurance Coverage in State
Contracts -- Implementation.**

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R131-13-4. Applicability of Rule.

(1) Except as provided in R131-13-4(2) below, R131-13 applies to all contracts entered into by the Board or the executive director, or on behalf of the Board, on or after July 1, 2009, if:

- (a) the contract is for design and/or construction; and
- (b)(i) the prime contract is in the amount of \$1,500,000 or greater; or
- (ii) a subcontract, at any tier, is in the amount of \$750,000 or greater.

(2) R131-13 does not apply if:

- (a) the application of R131-13 jeopardizes the receipt of federal funds;
- (b) the contract is a sole source contract; or
- (c) the contract is an emergency procurement.

(3) R131-13 does not apply to a change order as defined in Section ~~[63G-6-102]~~63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

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R131-13-7. Requirements and Procedures a Contractor Must Follow.

A contractor, including consultants and designers, must comply with the following requirements and procedures in order to demonstrate compliance with Section 63C-9-403.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor, including consultants, designers and others under contract with the Board or the executive director that is subject to the requirements of R131-13 no later than the time of execution of the contract:

- (a) demonstrate compliance by a written certification to the executive director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees; and
- (b) the contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors, including subconsultants, at any tier that are subject to the requirements of R131-13.

(2) Recertification. The executive director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsections 63C-9-403(1)(c)(i) and (iii) is met by the contractor if the contractor provides the executive director with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer.

For purposes of R131-13-7(3), actuarially equivalency is achieved by meeting or exceeding any of the following:

- (a) In accordance with Section 26-40-106(2)(a), the largest insured commercial enrollment offered by a health maintenance organization in the State, ~~[which the Children's Health Insurance Program has determined is the SelectHealth plan currently offered by SelectHealth, 4646 West Lake Park Blvd, Salt Lake City, Utah 84130. The reference to SelectHealth herein is to provide an example of a qualifying plan and is not intended to endorse or indicate a preference for the use of SelectHealth as the insurance provider in any way; or]which details of the plan are provided on the website of the Division at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>; or~~
- (b) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under R131-13-7(3)(a) above and employer premium contributions as required by statute.

(4) The health insurance must be available upon the first of the month following the initial ninety days from the beginning of employment.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to R131-13 must demonstrate compliance with R131-13 in any annual submittal. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of R131-13.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to R131-13 must demonstrate compliance with R131-13 for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of R131-13.

(7) Notwithstanding any prequalification process, any contract subject to R131-13 shall contain a provision requiring compliance with R131-13 from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be Imposed by the Board or Executive Director. The penalties that may be imposed by the Board or executive director if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of R131-13 may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who violates the provisions of R131-13 shall be liable to the employee for health care costs not covered by insurance.

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KEY: health insurance, contractors, contracts
Date of Enactment or Last Substantive Amendment: 2009
Authorizing, and Implemented or Interpreted Law: 63C-9-403;
63C-9-301(3)(a)

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended 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 upon filing.

NOTICES are governed by Section 63G-3-305.

Public Safety, Highway Patrol **R714-600** Performance Standards for Tow-Truck Motor Carriers

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32868
FILED: 8/3/09 11:26 AM

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-1-106(1)(a) which requires that the department shall set performance standards for towing companies to be used by the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department has set these performance standards for towing companies and continues to use them. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Joseph Vasquez by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at jvasquez@utah.gov

AUTHORIZED BY: Lance Davenport, Superintendent

EFFECTIVE: 08/03/2009

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

After a PROPOSED RULE or a CHANGE IN PROPOSED RULE has been published, and after any comment period has ended, the agency promulgating the rule may notify the Division of Administrative Rules of the effective date for the rule. 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." If the agency has not designated a comment period for a CHANGE IN PROPOSED RULE, the agency may make that CHANGE IN PROPOSED RULE effective on the 30th day following publication. If an agency fails to file a NOTICE OF EFFECTIVE DATE within 120 days from the publication of a PROPOSED RULE or a related CHANGE IN PROPOSED RULE the rule lapses and the agency must start the rulemaking process over.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(9), and Section R15-4-5.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 32722 (AMD): R156-1-308a. Renewal Dates
Published: 07/01/2009
Effective: 08/10/2009

No. 32715 (AMD): R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule
Published: 07/01/2009
Effective: 08/10/2009

No. 32706 (AMD): R156-24a. Physical Therapist Practice Act Rules
Published: 07/01/2009
Effective: 08/10/2009

No. 32712 (AMD): R156-26a. Certified Public Accountant Licensing Act Rule
Published: 07/01/2009
Effective: 08/10/2009

No. 32690 (AMD): R156-60c. Professional Counselor Licensing Act Rules
Published: 06/15/2009
Effective: 08/11/2009

No. 32707 (AMD): R156-67. Utah Medical Practice Act Rules
Published: 07/01/2009
Effective: 08/11/2009

No. 32710 (AMD): R156-68. Utah Osteopathic Medical Practice Act Rules
Published: 07/01/2009
Effective: 08/11/2009

Real Estate

No. 32725 (NEW): R162-150. Appraisal Management Companies
Published: 07/01/2009
Effective: 08/07/2009

Education

Administration
No. 32729 (AMD): R277-108-5. Assurances
Published: 07/01/2009
Effective: 08/07/2009

No. 32730 (AMD): R277-116. USOE Internal Audit Procedure
Published: 07/01/2009
Effective: 08/07/2009

No. 32731 (AMD): R277-402-1. Definitions
Published: 07/01/2009
Effective: 08/07/2009

No. 32732 (AMD): R277-473. Testing Procedures
Published: 07/01/2009
Effective: 08/07/2009

No. 32733 (AMD): R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program
Published: 07/01/2009
Effective: 08/07/2009

No. 32734 (AMD): R277-491-1. Definitions
Published: 07/01/2009
Effective: 08/07/2009

No. 32735 (NEW): R277-516. Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees
Published: 07/01/2009
Effective: 08/07/2009

No. 32736 (AMD): R277-705. Secondary School Completion and Diplomas
Published: 07/01/2009
Effective: 08/07/2009

No. 32737 (AMD): R277-713. Concurrent Enrollment of High School Students in College Courses
Published: 07/01/2009
Effective: 08/07/2009

Environmental Quality

Environmental Response and Remediation
No. 32696 (AMD): R311-201. Underground Storage Tanks: Certification Programs
Published: 06/15/2009
Effective: 08/18/2009

Health

Center for Health Data, Health Care Statistics
No. 32651 (AMD): R428-12. Health Data Authority Survey of Enrollees in Health Maintenance Organizations
Published: 06/01/2009
Effective: 08/06/2009

Insurance

Administration
No. 32415 (AMD): R590-175-3. General Requirements
Published: 03/15/2009
Effective: 08/13/2009

No. 32415 (CPR): R590-175-3. General Requirements
Published: 07/01/2009
Effective: 08/13/2009

Title and Escrow Commission

No. 32701 (AMD): R592-2. Title Insurance Administration Hearings and Penalty Imposition
Published: 06/15/2009
Effective: 08/10/2009

Natural Resources

Wildlife Resources
No. 32718 (AMD): R657-6. Taking Upland Game
Published: 07/01/2009
Effective: 08/10/2009

No. 32719 (AMD): R657-12. Hunting and Fishing Accommodations for People With Disabilities
Published: 07/01/2009
Effective: 08/10/2009

No. 32720 (AMD): R657-27. License Agent Procedures
Published: 07/01/2009
Effective: 08/10/2009

Transportation

Program Development
No. 32723 (AMD): R926-3. Class B and Class C Road Funds
Published: 07/01/2009
Effective: 08/13/2009

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, 2009, including notices of effective date received through August 14, 2009. 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 is not included in this issue of the Utah State Bulletin. The release of eRules version 2.0 has introduced different functionality with regards to the index; this functionality has yet to be fully tested. Persons interested in alternative methods of acquiring the same information should visit "Researching Administrative Rules" at: <http://www.rules.utah.gov/research.htm>

Questions regarding the index and the information it contains should be addressed to 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/>).
